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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930.

No. 575.

JULES W. ARNDSTEIN, APPELLANT,

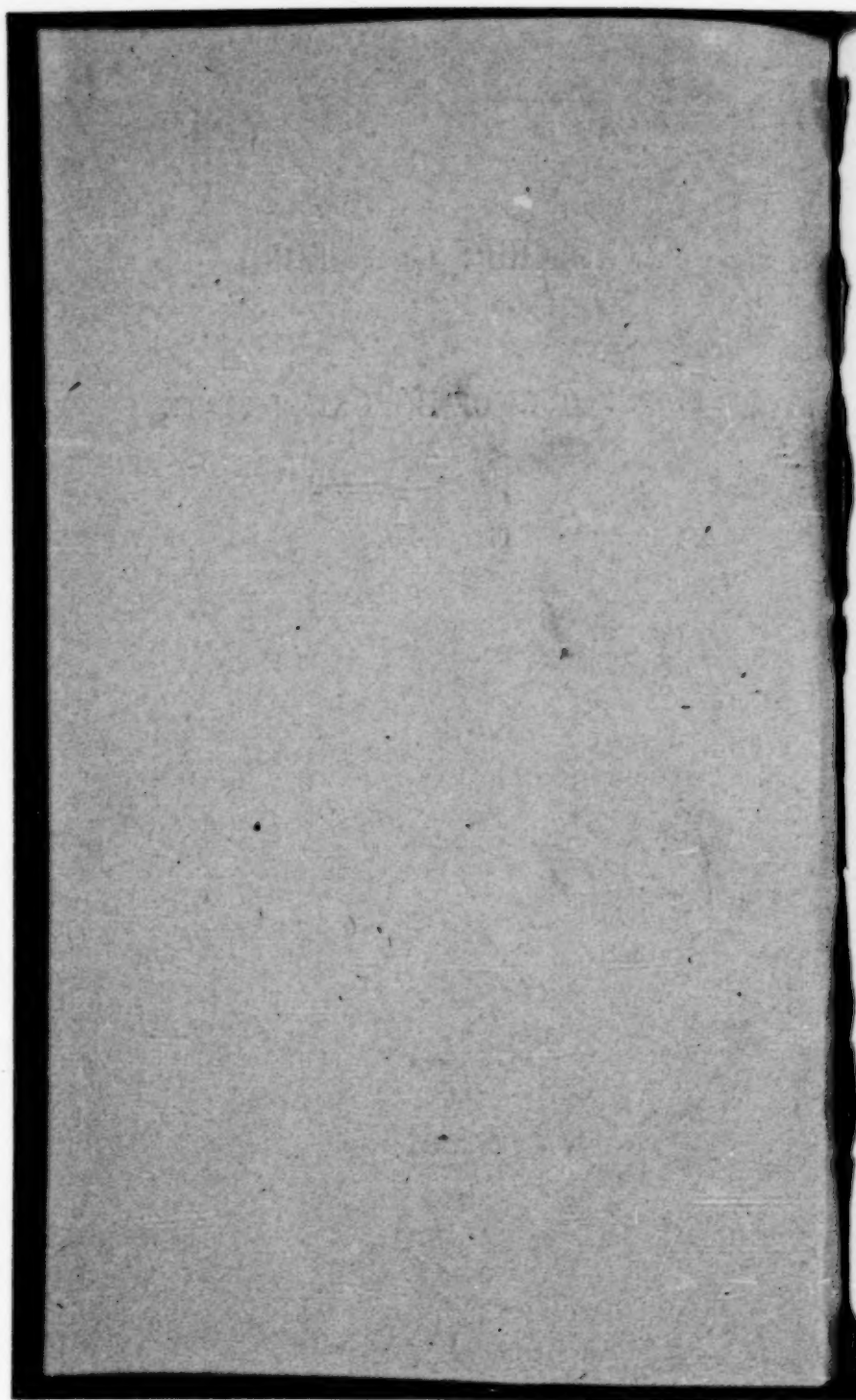
vs.

**THOMAS D. MCCARTHY, UNITED STATES MARSHAL FOR
THE SOUTHERN DISTRICT OF NEW YORK.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.**

FILED OCTOBER 3, 1930.

(27,932)



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1 & 2 District Court of the United States for the Southern District of New York.

In the Matter of JULES W. ARNDSTEIN, Petitioner.

To the Judges of the District Court of the United States for the Southern District of New York:

The petition of Jules W. Arndstein respectfully shows:

First. That your petitioner is a citizen of the United States and of the State of New York and is a resident of the City of New York in said State.

Second. That your petitioner is now unlawfully and without due process of law and in violation of his rights under the Federal Constitution imprisoned and restrained of his liberty in the Southern District of New York by Thomas D. McCarthy, United States Marshal for the Southern District of New York.

Third. Your petitioner is held by said United States Marshal, solely under the virtue of an order heretofore made by the District Court of the United States for the Southern District on the 15th day of September, 1920, committing your petitioner to the custody of said United States Marshal for an alleged contempt in refusing to answer certain questions propounded to him before and in the presence of Alexander Gilchrist, Jr., a United States Commissioner for the Southern District of New York, sitting in the Southern District of the State of New York by the attorney for the trustee in bankruptcy in the matter of Nicholas Arndstein, bankrupt;

3 that your petitioner is restrained of his liberty only under and by virtue of said order of commitment and not for any other cause or reason; that your petitioner's refusal to answer the questions asked him in said bankruptcy proceedings grew out of the facts and circumstances hereinafter set forth.

Fifth. On February 20th, 1920, the National Surety Company filed a petition for involuntary bankruptcy against your petitioner, a copy of which petition is hereby annexed, and marked "Exhibit A;" that on the 20th day of February, 1920, a subpoena in bankruptcy was issued returnable February 27th, 1920; that on the 25th day of February, 1920, said subpoena was served by delivery to Sylvia Roma, a maid employed by Fanny Brice Arndstein, your petitioner's wife; that on the 4th day of March, 1920, an adjudication of bankruptcy was entered by default and an order of reference in said matter entered referring same to Seaman Miller, a copy of which adjudication of bankruptcy, and order of reference is hereto annexed and marked "Exhibit B;" that on the 18th day of May, 1920, an order for the examination of your petitioner under section 21-a of the Bankruptcy Act was served and filed upon said peti-

tioner; that thereafter and on various dates your petitioner was examined under section 21-a and refused to answer certain questions propounded him by the attorney for the trustee upon the ground that said questions would tend to degrade or incriminate your petitioner; that thereafter and on the first day of June, 1920, an order to show cause to punish your petitioner for contempt was signed by Augustus N. Hand, United States District Judge, and thereafter served upon your petitioner; a copy of said order to show cause and the affidavits upon which same were based is hereto annexed and marked "Exhibit C;" that thereafter and on the 10th day of June, 1920, pursuant to an order of this Court and under the direction of the said

4 Court schedules were filed by your petitioner, a copy of which schedules is hereto annexed and marked "Exhibit D;" that thereafter and on the 29th day of June, 1920, a decision was rendered by said Augustus N. Hand holding that your petitioner should not be punished for contempt and that your petitioner was privileged in refusing to answer said questions under the Constitution of the United States, a copy of which opinion is hereto annexed and marked "Exhibit E;" that thereafter and on the 30th day of June, 1920, a motion was heard by Justice Hon. Augustus A. Hand as to whether the bankrupt should be required to testify about his schedules and whether the bankrupt should not be required to turn over the proceeds of the securities set forth in the motion papers herein; that thereafter and on August 10th, 1920, a decision was handed down by Justice Hand, directing your petitioner to answer certain questions by reason of the fact that your petitioner had filed the schedules as ordered and directed by said Court, a copy of which opinion is hereby annexed and marked "Exhibit F;" that thereafter on the 7th day of September, 1920, an order was entered in the clerk's office for the Southern District of New York, directing your petitioner to make answer to certain interrogatories, a copy of which order is hereby annexed and marked "Exhibit H;" that thereafter and on the 14th day of September, 1920, your petitioner appeared before United States Commissioner Alexander Gilchrist, Jr., in pursuance to the subpoena served upon your petitioner under section 21-a of the Bankruptcy Act and upon being asked the questions contained in schedule C under said order refused to answer said questions upon the ground that said questions would tend to degrade and incriminate your petitioner, and thereupon your petitioner was directed by said Commissioner to answer said questions and then again your petitioner refused to answer said questions upon the ground that said questions would tend to degrade and incriminate your petitioner; that thereafter upon the 15th day of Sep-

5 tember, 1920, an order was entered by Circuit Judge Martin T. Manton, sitting as a District Judge for the Southern District of New York committing your petitioner to the custody of Thomas D. McCarthy as Marshal for the Southern District of New York for his refusal to answer the questions directed to be answered by the Commissioner upon the hearing had under section 21-a of the Bankruptcy Act, a copy of which order is hereto annexed and marked Exhibit "I;" that under said order your petitioner was taken into

custody by the said Marshal and restrained of his liberty and is now in the custody and control of said Marshal by virtue thereof.

That on the — day of February, 1920, three indictments were found against your petitioner by the Grand Jury of New York County, copies of which indictments are hereto annexed and marked Exhibits "J," "K," and "L." That your petitioner is informed and believes that the bonds mentioned in said indictments are the same bonds on account of which the National Surety Company, the petitioning creditor in the bankruptcy proceedings, claims to be a creditor of your petitioner. That your petitioner is also informed and believes that certain proceedings have been taken before the United States Grand Jury for the District of Columbia, and that your petitioner is about to be indicted by the Federal Grand Jury, as your petitioner is informed and believes, being the bonds on account of which the National Surety Company, the petitioning creditor in the Bankruptcy proceedings, claims to be a creditor of your petitioner.

That under the facts hereinbefore set out by your petitioner and from the face of said petition the Court was without jurisdiction to adjudge your petitioner a bankrupt; that your petitioner was not guilty of contempt in refusing to answer the questions asked him by said United States Commissioner in said bankruptcy proceeding and

6 that the District Court had no jurisdiction or power to adjudge your petitioner guilty of contempt, and said order of commitment is null and void, and the arrest and detention of your petitioner is without due process of law and in violation of his Constitutional rights.

Wherefore, your deponent prays that a writ of habeas corpus shall be directed to said Thomas D. McCarthy, Marshal of the United States, and to each and all of his deputies, requiring him and them to bring and have your petitioner before this Court at a time to be determined by this Court together with the true cause of the detention of your petitioner to the end that due inquiry may be had in the premises and your petitioner will ever pray, etc.

Dated New York, New York, September 15th, 1920.

JULES W. ARNDSTEIN,

Petitioner.

FALLON & McGEE,

Attorneys for Petitioner,

149 Broadway, Borough of Manhattan,
New York City.

7 UNITED STATES OF AMERICA,
Southern District of New York:

STATE OF NEW YORK,
County of New York, ss:

Jules W. Arndstein, being duly sworn, deposes and says: That he is the person whose name is subscribed to the foregoing petition for a writ of habeas corpus; that he has read the said petition and knows the contents thereof; that the same is true to his own knowledge, ex-

cept as to the matters therein stated to be alleged upon information and belief, and as to these matters he believes it to be true. That no previous application for the writ of habeas corpus has been made.

JULES W. ARNDSTEIN.

Subscribed and sworn to before me this 15th day of September, 1920.

ALEX GILCHRIST,

Notary Public, Rockland & N. York Cos.

8 District Court of the United States for the Southern District of New York.

In the Matter of NICHOLAS ARNSTEIN, alias J. W. ARNSOLD, alias James Wilfred Adair, alias James Wilford Adair, alias James W. or J. W. Ames, alias McCormick, alias Borach, alias Brice, Alleged Bankrupt.

Petition for Involuntary Bankruptcy.

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

The petition of the National Surety Company, respectfully shows upon information and belief:

I. Said Nicholas Arnstein for the greater portion of the six months next immediately preceding the date of the filing of this petition has had his principal place for the transaction of business at No. 1 West 83rd Street and No. 167 West 72nd Street, in the Borough of Manhattan in the City of New York, and has resided in said district, during said period and is neither a wage earner nor a person engaged principally in farming or the tillage of the soil nor is he a municipal, railroad, insurance or banking corporation, but is by occupation an alleged broker.

II. Said alleged bankrupt is insolvent and owes debts to the amount of more than One Thousand Dollars.

III. Your petitioner is a creditor of said alleged bankrupt and has a provable claim against him amounting in the aggregate in excess of securities held by him to the sum of upwards of \$500 and your petitioner is not entitled to priority on his said claim within the meaning of the Bankruptcy Act of 1898 nor has your petitioner received a preference within the meaning of said Act.

IV. The nature and amount of your petitioner's claim is as follows: various customers of your petitioner, consisting of Members of the New York Stock Exchange, investment houses, and banking institutions, have been bonded by your petitioner by what are commonly known as Blanket Bonds. These bonds are intended to insure such persons against loss by theft, etc. Large sums of money

have recently been lost to such persons by theft, etc., by the alleged bankrupt, and your petitioner has, in all instances where demand has been made upon your petitioner, reimbursed such persons for such losses. Such persons thereupon duly assigned, transferred and set over to your petitioner all claims and demands of every nature, kind and description against the persons who stole such property and against any and all persons who have come into possession of such property, which said reimbursement and indebtedness to your petitioner exceeds the sum of \$500.

V. The said alleged Bankrupt is a notorious criminal with a well-known criminal record, not only in the United States but in England. His assets consist of many thousands of dollars, the proceeds of such stolen property as aforesaid, and his liabilities are in excess of these assets, but the exact amount of such liabilities are at the present time unknown to your petitioner.

VI. Within four months next immediately preceding the date of the filing of this petition, the said Alleged Bankrupt was and
10 still is insolvent and while so insolvent committed acts of bankruptcy in that within the said period of four months he made payments and transfers of assets, to various persons with intent to defraud his creditors, as follows: He deposited the sum of \$16,000 or caused the same to be deposited, with the Pacific Bank of New York City under the name of J. W. Arnold and this sum of \$16,000 was the specific moneys, the proceeds of such stolen property as aforesaid. He likewise transferred large sums of money to one Nick Cohen and to his wife and to others, all with to hinder, delay and defraud his creditors, and all within the period of four months as aforesaid.

VII. The creditors of the said Alleged Bankrupt are less than twelve in number.

Wherefore your petitioner prays that service of this petition with a subpoena may be made upon the said Alleged Bankrupt as provided by the Bankruptcy Act and that he may be adjudged a bankrupt within the purview of the said Act.

Dated, February 19th, 1920.

NATIONAL SURETY COMPANY,
By WM. H. THOMPSON,
Vice Pres.,

10½ UNITED STATES OF AMERICA,
Southern District of New York,
City and County of New York, ss:

William A. Thompson, being duly sworn deposes and says that he is one of the Vice Presidents of the National Surety Company; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true.

Deponent further says that he makes this verification because petitioner is a domestic corporation and deponent is one of its officers, to wit, a Vice President.

WM. A. THOMPSON.

Sworn to before me this 19th day of February, 1920.

[SEAL.]

H. E. EMMETT,

Notary Public.

(Stamp.)

Endorsed: By Augustus N. Hand, D. J. Filed Feb. 19th, 1920, 5-35. Court file stamp. Filed Feb. 20, 1920. 3:20 p. m.

11 In the District Court of the United States, for the Southern District of New York.

In Bankruptcy.

In the Matter of NICHOLAS ARNSTEIN, alias J. W. ARNOLD, alias JAMES WILFRED ADAM, etc., Bankrupt.

At New York City, in said District, on the 4th day of March A. D. 1920, before the Honorable Learned Hand, Judge of the said Court in Bankruptcy, the petition of National Surety Company that Nicholas Arnstein be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered and bankrupt having been served and default in pleading, the said Nicholas Arnstein, alias J. W. Arnold, alias James Wilfred Adam, alias James Wilford Adam, alias James W. or J. W. Ames, alias McComeck, alias Brach, alias Brice is hereby declared and adjudged a bankrupt accordingly.

And it is further ordered that the said bankrupt file schedules in triplicate as required by law within ten days from the date hereof.

And it is further ordered that the said matter be referred to Leaman Miller one of the referees in bankruptcy of this Court, to take all such further proceedings therein as are required by said Acts of Congress, and all such acts therein as the Court might take or perform, except such as by law or the general orders of the Supreme Court are required to be performed by the Judge; and that the said bankrupt shall attend before said referee on the 9th day of March, 1920, at 10 o'clock A. M., and thenceforth shall submit to such orders as may be made by said referee or by the Court relating to his said bankruptcy.

Witness, the Honorable Learned Hand, Judge of the said Court, and the seal thereof, at The City of New York, in said District, on the 4th day of March A. D. 1920.

LEARNED HAND,

District Judge.

ALEX. GILCHRIST, Jr., *Clerk.*

A True Copy.

[SEAL.] ALEX GILCHRIST, Jr., *Clerk.*

[Endorsed:] No. 27524. United States District Court, Southern District of New York. In Bankruptcy. In the matter of Nicholas Arnstein, Bankrupt. Adjudication of Bankruptcy and Order of Reference. U. S. District Court, S. D. of N. Y. Filed Mar. 4, 1920, 3.30 P. M. Saul S. Myers, 60 Wall St.

12 District Court of the United States for the Southern District of New York.

No. 27525.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Order to Show Cause to Punish for Contempt.

On reading and filing the annexed affidavits of Saul S. Myers and of Joseph K. Guerin, each sworn to June 1, 1920, and

On reading the following papers on file herein in the Office of the Clerk of this Court, to wit, the petition for the involuntary bankruptcy of the said Arnstein, the order adjudicating the said Arnstein a bankrupt, the orders for the examination, under Sec. 21 A of the Bankruptcy Act, of the said Arnstein and witnesses, the testimony of the said Arnstein given pursuant to such orders and the certificates of the Special Commissioners.

And on motion of Saul S. Myers, attorney for the said Trustee.

I do hereby order the said Arnstein to show cause at a State Term of this Court for the hearing of litigated motions in bankruptcy, to be held at the United States Court and Post Office Building in the Borough of Manhattan, in the City of New York, on June 7, 1920, at the opening of court on that day or as soon thereafter as counsel can be heard why the following relief should not be granted herein, to wit:

13 (a) Why the said Arnstein should not be punished for contempt of court for his refusal to answer the questions put to him on such examination before Alexander Gilchrist, Jr., Esq., and William Tallman, Esq., Special Commissioners, which the said Commissioners directed the Bankrupt to answer and which he refused to answer, which questions are set forth in Schedule A of the said annexed affidavit of the said Saul S. Myers.

(b) Why the said Arnstein should not be punished for contempt of court for his refusal to answer the questions which the said Commissioners asked him on such examinations, which questions are set forth in Schedule B of the said annexed affidavit of the said Saul S. Myers.

(c) Why the said Arnstein should not be punished for contempt of court for his refusal to answer questions put to him by counsel for the said Trustee, which the said Arnstein refused to answer on the ground that the answers might tend to incriminate or degrade

him, which questions are set forth in Schedule C of the said annexed affidavit of the said Saul S. Myers.

(d) Why the said Commissioners should not be instructed to require answers from the said Arnstein to questions put to him by counsel for the said Trustee to which the said Arnstein objected on the ground that the answers might tend to incriminate him, which objections the said Commissioners sustained and refused to take by the said Trustee, which questions are set forth in Schedule D of the said annexed affidavit of the said Saul S. Myers.

14 (e) Why the said Commissioners should not be instructed to require answers from the said Arnstein to questions put to him by counsel for the said Trustee to which the said Arnstein objected on the ground that the answers might tend to incriminate him, which objections the Commissioners sustained and refused to instruct the witness to answer to which ruling and refusal the said Trustee excepted, which questions are set forth in Schedule E of the said annexed affidavit of the said Saul S. Myers.

(f) Why the said Arnstein should not be required to forthwith turn over to the said Trustee the securities more fully set forth in the annexed affidavit of the said Saul S. Myers, which securities Joseph Gluck testified before the said Commissioners he delivered to the said Arnstein and to one Nick Cohn, which securities it is claimed belong to the said Trustee, and why the said Arnstein should not be directed to turn over to the said Trustee the sum of Five hundred dollars (\$500) which he testified before the said Commissioners he received from his wife on or about February 12th, 1920, and for the disposition of which he has failed to account and why upon his failure to turn over such securities and the said sum of Five hundred dollars (\$500) he should not be punished for contempt of court.

(g) Why the said Arnstein should not be punished for contempt of court for failure to file schedules of his assets and liabilities herein.

Why such other and further relief should not be granted as to the Court may seem proper.

15 I do further order that this order to show cause and the annexed papers may be served on or before June 3, 1920, and that such service be sufficient, and that any answering affidavits must be filed and served on the attorney for the said Trustee on or before June 4, 1920, and

I do further order that the said Arnstein forthwith deliver to the said Trustee all property, assets and effects of whatsoever nature and wheresoever located, including accounts, notes and bills receivable, drafts, checks, moneys, certificates of stock, bonds, securities and all other choses in action, account books, records, chattels, lands and buildings, life and fire and all other insurance policies in his possession or under his control, and I do hereby enjoin and restrain the said Arnstein from disposing of or interfering with any of the prop-

erty of the estate herein. Dated at the Post Office Building, in the Borough of Manhattan, in the City of New York, June 1st, 1920.

AUGUSTUS N. HAND,
U. S. D. J.

16 District Court of the United States, Southern District
of New York.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Affidavit of Saul S. Meyers.

UNITED STATES OF AMERICA,
Southern District of New York,
City and County of New York, ss:

Saul S. Myers, being duly sworn, deposes and says:

1. I am the attorney in this proceeding for Hon. Henry A. Gilder-sleeve, Trustee in Bankruptcy herein. I also represent the American Surety Company, the National Surety Company, the Lloyds of Eng-land and other creditors herein.

2. I have been conducting certain examinations herein under Sect. 21-A of the Bankruptcy Act and among the various witnesses examined was one Joseph Gluck. Gluck was examined on several different days. He was recalled on the afternoon of April 30th last and was shown a list of securities which the various surety com-panies and Stock Exchange Houses claim had been lost. Gluck examined the list and gave a detailed account of the securities which came into his possession and gave the name of the persons to whom he gave those securities.

3. Gluck testified that the following is a true and correct list of the securities which, according to the best of his recol-
17 lection, he had given to the Bankrupt and to Nick Cohen at one and the same time.

Stocks.

| No. of shares. | Name. |
|-------------------|----------------------|
| 100 | American Beet Sugar. |

The testimony of Joseph Gluck on that point is as follows:

"A. I turned that over to Nick Cohen. Nick Arnstein was there at the time.

* * * * *

Q. No one was present except Cohen and Arnstein?

A. No, sir.

Q. At no time; is that right?

A. That is right.

* * * * *

Q. * * * Now, the 100 American Beet Sugar you give it to Nick Cohen?

A. Yes, sir, Cohen and Arnstein.

No. of
shares.

Name.

100

American Car Foundry.

The testimony of Joseph Gluck on that point is as follows:

Q. Now, take up No. 4?

A. American Car Foundry.

Q. How many?

A. 100 shares * * * That was given to Nick Cohen

Q. All right; who else was present?

A. Nick Arnstein.

Q. Let me ask you here, was Nick Arnstein present every time?

A. Every time I turned over certificates.

Q. You have identified these parties from their photographs in this court, have you?

A. Positively; yes, sir."

100

American Smelting & Refining
Preferred.

18

100

American Smelting & Refining
Common.

The testimony of Joseph Gluck on this point is as follows:

"Q. No. 12?

A. American Smelting & Refining.

Q. How many?

A. 100 shares of common and 100 shares preferred.

* * * These went to Nick Cohen in the presence of
Nick Arnstein.

* * * * *

Q. You gave those to Nick Cohen and Nick Arnstein?

A. Yes, sir.

No. of
shares.

500

Name.

Atlantic, Gulf & West Indies.

The testimony of Joseph Gluck on that point is as follows:

"A. They were given to Nick Cohen in around the month of October.

Q. Where?

A. In Pennsylvania Station.

Q. New York?

A. New York.

Q. Thirty-third Street?

A. 33rd Street.

Q. Who else was present?

— Nick Arnstein, in the state room.

Q. Arnstein was always present?

A. Always present.

Q. He always saw you hand over those certificates to Nick Cohen?

A. Yes, sir.

Q. But you never handed them personally to Arnstein?

A. Let me get this straight. I handed them over to him, (Arnstein) and then he put them in the grip, see?

* * * * *

Q. This was in New York City?

A. This was in New York City; Pennsylvania Station.

Q. Can you give us the date?

19 A. October 16th, I think. That was the first trip to Washington—or October 13th.

Q. What time?

A. 12 o'clock; 12:15 a. m. train.

Q. That would be 12:15 a. m. on the 14th?

A. Yes, sir.

Q. Past midnight?

A. Yes, sir.

Q. Now, you may say that those were the only three persons present: You, Nick Cohen and Nick Arnstein; is that right?

A. Yes, sir.

Q. And Nick Arnstein actually had those 500 shares in his hand; is that right?

— Yes, sir."

- | No. of shares. | Name. |
|----------------|---|
| 70 | Baldwin Locomotive. |
| | The testimony of Joseph Gluck on that point is as follows: |
| | "Q. Who got those 70 shares? |
| | A. Nick Cohen and Nick Arnstein." |
| 10 | Commonwealth Petroleum Common. |
| | The testimony of Joseph Gluck on that point is as follows: |
| | "Q. No. 35? |
| | A. 10 shares of Commonwealth Petroleum common. That is familiar to me. I am pretty certain I gave that to Nick Cohen. |
| 200 | Crucible Steel Common. |
| | The testimony of Joseph Gluck on that point is as follows: |
| | "Q. No. 38? |
| | A. 200 shares of Crucible Steel common. I delivered it to Nick Cohen in the presence of Nick Arnstein." |
| 200 | Denver & Rio Grande Railroad Preferred. |
| | The testimony of Joseph Gluck on that point is as follows: |
| 20 | "Q. No. 41? |
| | A. Denver & Rio Grande Railroad Co. preferred. |
| | Q. How many? |
| | A. There are 300 shares down here. I only know of 200 shares delivered by me to Nick Cohen and Arnstein." |
| 100 | Endicott-Johnson Company. |
| | The testimony of Joseph Gluck on that point is as follows: |
| | "Q. No. 43? |
| | A. 100 shares of Endicott-Johnson Co. delivered to Nick Cohen in the presence of Arnstein." |
| 300 | B. F. Goodrich Company. |
| | The testimony of Joseph Gluck on that point is as follows: |
| | "Q. No. 46? |
| | A. 300 shares of B. F. Goodrich Co. I don't know if I |

gave him two or 300 shares. But I gave it to Nick Cohen. I don't remember who I got that from, either. I gave 2 or 300 down here, but I only can remember 200. But it might have been 300."

No. of
shares.

Name.

100 Guffey, Gillespie Oil Co.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 49?

A. 100 shares of Guffey, Gillespie Oil Co. given to Nick Cohen in the presence of Arnstein."

100 International Mercantile Marine Preferred.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 55?

A. International Mercantile Marine preferred; 100 shares. I think that was given to Nick Cohen in the presence of Arnstein."

21

400 Mexican Petroleum.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 66?

A. 100 shares of Mexican Petroleum. That was given by me to Nick Cohen in the presence of Nick Arnstein. I only gave them 100 shares. There is 300 down here.

Q. Then you must have given him 300?

A. I gave him 400 shares of that. He has only got 300 down. I gave Nick Cohen 400 shares of Mex. Pet."

200 Ohio City Gas Company.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 73?

A. 200 shares of Ohio City Gas Co. delivered to Nick Cohen in the presence of Arnstein."

320 Pennsylvania R. R.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 74?

A. 320 shares of Pennsylvania Railroad. 300 shares was given to Nick Cohen in the presence of Arnstein."

No. of
shares.

Name.

100

Pond Creek.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 76?

A. 100 shares of Pond Creek given to Nick Cohen in the presence of Arnstein.

100

Republic Iron & Steel Co.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 82?

22 A. 100 shares of Republic Iron & Steel Co. That was delivered to Nick Cohen."

50

Reynolds Tobacco Company.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 84?

A. 50 shares of Reynolds Tobacco Co. That was delivered to Nick Cohen in the presence of Arnstein.

300

St. Louis & San Francisco R. R.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 95?

A. 400 shares of St. Louis & San Francisco Rail. I know of 300 shares.

Q. Who did you give the 300 shares to?

A. Nick Cohen, in the presence of Arnstein.

Q. What became of the other 100?

A. I don't know."

100

Studebaker, Inc., Common.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 97?

A. 300 shares of Studebaker, Inc. common. He has got down 100. I don't know whether it is 100 or 300—it is 100 shares of Studebaker.

Q. You gave the 100 shares to Nick Cohen?

A. Yes sir.

Q. The other 200, what about them?

A. I don't know. Only, if it is in the same delivery, it is the same thing. I can't state."

No. of
shares.

Name.

200 Texas Company Preferred.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 100?

A. 200 shares of Texas Company preferred. They were 100 each; 200 shares. I gave those to Nick Cohen in the presence of Nick Arnstein."

600 Union Pacific.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 101?

A. 600 shares of Union Pacific. I know of 500 shares of that. That was given to Nick Cohen and Nick Arnstein.

Q. And the other 100 shares?

A. I don't know anything about that. * * * I wish to correct my testimony and say that in reference to No. 101, there is 600 shares of Union Pacific, instead of 500 which I gave to Nick Cohen."

100 United Retail Stores, Inc., Common.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 103?

A. 100 shares of United Retail Stores, Inc. common. I know of a temporary certificate; that is the one. That was given to Nick Cohen and Nick Arnstein.

Q. That is 100 shares?

A. Yes sir.

Q. Where did that come from?

A. That came from Bamberger, Loeb & Co."

100 Wheeling & Lake Erie.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 108?

A. 100 shares of Wheeling & Lake Erie, given to Nick Cohen and Arnstein.

No. of
shares.

Name.

100

Worthington Pump.

The testimony of Joseph Gluck on that point is as follows:

24

"Q. No. 110?

A. 100 shares of Worthington Pump. That was given to Nick Cohen and Nick Arnstein. And there is 15 more I don't know anything about.

Q. What became of the 100 shares?

A. They were given to Nick Cohen and Nick Arnstein. There is 15 other shares that I don't know anything about. That is 115 all together."

Bonds.

Amount.

Name.

Value.

2

Iowa Central Railroad Co.

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 130?

A. 2 Iowa Central Railroad Co. bonds. 2 bonds, they are register; 1,000 dollar bonds. They were given to Nick Cohen and Nick Arnstein.

Q. They have been located?

A. 2 registered bonds. Were they registered; two names on?

Q. Yes.

A. Those were the only two registered bonds. That leads us up to * * * if that was located, there is a lot of bonds that were delivered to a man in the hospital; at the Post Graduate Hospital, on the second floor. I don't know his name. A Jewish name.

Q. Mortis?

A. No. It is something with a "stein" on the end of it. I can't remember the name. I wasn't up to see him.

Q. Tell us that, because that is very important now. Tell us all about that.

A. Yes, I will tell you: When he was up there in the hospital sick—

Q. (Interrupting.) When was that?

A. That was around October—around September; in the month of September, he was sick; he was on the second floor, his room was a private room.

Q. What was the matter with him?

A. That I can't state. * * * I can't give you the exact date; but you can look it up. I don't know if that will give you any help, the date that he got those bonds. He was sick; Nick Cohen called up, on 14th Street; he called up Long Distance and got Bridgeport."

| Amount. | Name. | Value. |
|---------|-------------------|--------|
| \$1,000 | Wilson & Company. | |

The testimony of Joseph Gluck on that point is as follows:

"Q. No. 158?

A. Wilson & Co.; 1 1928—no; there is two different maturity dates. One Wilson & Co. bond was given to Nick Cohen. I don't know which maturity date; 1928 or 1929. That was a 1,000 dollar bond; that was given to Nick Cohen and Arnstein.

4. Joseph Gluck testified that he first met Nick Cohen in September, 1919, through one Stahl; that Cohen subsequently introduced him to Arnstein; that the three of them planned to take the securities to Washington, Philadelphia, Boston and Baltimore, and dispose of them, and the three of them that is to say: Gluck, Arnstein and Cohen, made trips to those cities and disposed of these securities and Joseph Gluck was paid a portion of the proceeds, not only by Cohen but also by Arnstein. Joseph Gluck testified that these trips were during the months of October and November, 1919.

5. The testimony of the bankrupt herein shows that he left this city on or about February 12th last and did not return until May 15th last. Immediately upon his return he was examined before Mr. Gilchrist and was shown by me the same list of securities which was shown to the said Gluck, and he was asked by me to state whether he had any of those securities in his possession or under his control, or whether he did have them in his possession or under his control at any time, and he declined to answer on the ground that the answers might tend to incriminate him or degrade him. The testimony on that point is as follows:

Q. I show you a list of securities and ask you whether you had any of these securities in your possession or under your control? (Handing witness.)

A. I can't answer for the same reason.

Q. Will you look at it, you cannot answer until you look at it?

The Commissioner: Use some judgment.

The Witness: I cannot answer for the same reason, it may incriminate me.

List marked Exhibit 1 for identification of this date."

6. Schedule A hereto annexed is a list of questions which the Commissioner directed the bankrupt to answer and which he refused to answer. Schedule B hereto annexed is a list of questions which the Commissioner asked of the witness which the bankrupt refused to answer. Schedule C hereto annexed is a list of questions put by counsel for the Trustee which the bankrupt refused to answer on the ground that the answer might tend to incriminate or degrade him. Schedule D hereto annexed is a list of questions put to the bankrupt by counsel for the Trustee to which the bankrupt objected on the ground that the answers might tend to incriminate him which objection the Commissioner sustained to which exception was taken by the Trustee. Schedule E annexed hereto is a list of the questions put to the bankrupt by counsel for the Trustee to which the bankrupt objected on the ground that the answer might tend to incriminate him, which objection the Commissioner sustained and refused to instruct the witness to answer, to which refusal the Trustee excepted.

SAUL S. MYERS.

Sworn to before me this 1st day of June, 1920.

A. MALES,
Notary Public.

Bronx County Clerk's No. 11,
Bronx Co. Reg. No. 2181.
N. Y. County Clerk's No. 448.

27

SCHEDULE A.

This is a schedule of questions which the Commissioner directed the Bankrupt to answer and which he refused to answer.

| | Page |
|---|------|
| 1. Where you spent it? (Referring to the sum of \$500, which the bankrupt testified he had when he left New York in February last?) | 2330 |
| 2. You have the knowledge? (Referring to the place where the Bankrupt spent the sum of \$500, which he testified he had when he left New York in February last) | 2330 |
| 3. You refuse to answer the question whether or not you have the knowledge where you spent it? | 2331 |
| 4. What property had you which you referred to the other day, some seven months prior to the commencement of the proceeding in bankruptcy? | 2334 |
| 5. Were you in October, 1919, in the possession of any property? | 2338 |
| 6. Have you had any property besides the \$500 you mentioned, within the last seven months preceding the petition in bankruptcy? | 2345 |
| 7. Aside from the \$500 you spoke of, have you had any money or property in your possession, or held by you, since the filing of the bankrupt petition? | 2351 |

| | Page. |
|---|-------|
| 28 | |
| 8. Did you instructed Messrs. Fallon & McGee to appear for you in this bankruptcy proceeding?..... | 2353 |
| 9. Did you at any time during the past six months hear any conversation between Joe Gluck and Nick Cohen? | 2382 |

Arnstein's Testimony.

| | |
|---|------|
| 10. What city did you get the machine? (Referring to the automobile in which the bankrupt returned to New York City after being away since Lincoln's Birthday, 1920.) | 69 |
| 11. Will you say where you were yesterday?..... | 72 |
| 12. Do you know Randolph Newman, the lawyer? | 76 |
| 13. Do you know Nick Cohen? | 2157 |
| 14. Have you ever had any business transactions with him of any nature, kind or description? (Referring to Nick Cohen.) | 2164 |
| 15. How much money have you in your possession or under your control? | 2180 |

29 SCHEDULE B.

This is a schedule of questions which the Commissioner asked the Bankrupt and which he refused to answer.

Arnstein's Testimony.

| | |
|---|----|
| 1. Have you had any business relations with them. Mr. Arnstein, or with any one of the persons that Mr. Myers has questioned you about? | 29 |
|---|----|

30 SCHEDULE C.

This is a schedule of questions put by counsel for the Trustee which the Bankrupt refused to answer on the ground that the answer might tend to incriminate or degrade him.

Arnstein's Testimony.

| | Page. |
|--|-------|
| 1. Will you state to the Court where you went first, just before Lincoln's Birthday of this year?..... | 8 |
| 2. Where did you come from | 9 |
| 3. Where did you go first when you got in New York State? | 9 |
| 4. Well, where did you go? | 9 |
| 5. Will you say where you were yesterday | 9 |
| 6. Have you received any communication from your wife since Lincoln's Birthday, either directly or indirectly? | 22 |
| 7. When did you see Joe Gluck last? | 26 |

| | Page |
|--|------|
| 8. Do you say whether you know him or not?..... | 26 |
| 9. Do you know Irving Gluck?..... | 26 |
| 10. Do you know Rudolph Bunora? | 26 |
| 11. Do you know Herbert Bunora? | 26 |
| 12. Do you know Murray Fox? | 26 |
| 13. Do you know James Kean? | 26 |
| 14. Do you know David Haines? | 26 |
| 15. Do you know Ed. Furey? | 26 |
| 31 | |
| 16. Do you know David Sullivan? | 27 |
| 17. Do you know Norman S. Bowles? | 27 |
| 18. Do you know W. W. Easterday? | 27 |
| 19. Well, do you know Hartford Jimmy?..... | 27 |
| 20. Do you know Al Hunter? | 28 |
| 21. Do you know Billy King? | 28 |
| 22. Do you know Phil. Kastel? | 28 |
| 23. Do you know Nick Cohen? | 28 |
| 24. Do you know Charlie Drucker? | 28 |
| 25. Do you know Eddie Winkler? | 28 |
| 26. Do you know Arthur Ecrement? | 28 |
| 27. Did you ever know Mortimore Bernstein?..... | 29 |
| 28. Do you know Louis Bleet?..... | 30 |
| 29. Do you know Cheeks Ginsberg? | 30 |
| 30. Do you know anyone in Cleveland? | 30 |
| 31. Do you know Samuel T. Haas? | 30 |
| 32. Do you know Joseph Klein? | 30 |
| 33. Do you know Dan Lloyd? | 30 |
| 34. Do you know Dan Lloyd? | 30 |
| 35. Do you know Joe Marion? | 30 |
| 36. Do you know George Hackett? | 31 |
| 37. Do you know Sam Gireau? | 31 |
| 38. Do you know Michael Radice? | 31 |
| 39. Don't you know this man? (Showing witness photo- graph, Exhibit 6 for identification of April 28th, 1920.) | 31 |
| 32 | |
| 40. You won't say whether you know that man or not?... | 31 |
| 41. Do you know this man? (Showing witness photo- graph, Exhibit 5 for identification of April 28th, 1920.) | 31 |
| 42. Do you know this man? (Showing witness photo- graph, Exhibit 7 for identification of April 28th, 1920.) | 32 |
| 43. Do you know this man? (Showing witness photo- graph, Exhibit 7 for identification of April 28th, 1920.) | 32 |
| 44. Do you know this man? (Showing witness another photograph | 32 |

| | Page. |
|---|-------|
| 45. Do you know Mattie Pandolff? | 32 |
| 46. Do you know Joe Peque? | 32 |
| 47. Do you know Jimmy Ryan? | 32 |
| 48. Do you know E. P. Strong? | 33 |
| 49. Do you know Frank Thompson? | 33 |
| 50. I show you a list of securities and ask you whether you ever had any of these securities in your possession or under your control? (Showing witness a list marked for identification of May 15th, 1920.) | 33 |
| 51. Did you ever see any stocks or bonds during the past year, anywhere? | 36 |
| 33 | |
| 52. Did you touch any stocks or bonds any time, or place, within the past year? | 35 |
| 53. Did you buy or sell any shares of stock or bonds at any time during the past year? | 35 |
| 54. Do you say that you never had in your possession or under your control, a single share of stock or bond mentioned in this list Exhibit 1 for identification of this date? | 36 |
| 55. Well, do you say that you never saw those securities? .. | 36 |
| 56. You say you never touched them? | 36 |
| 57. Did you ever see them in anyone else's possession? | 36 |
| 58. Did you ever go to Washington with Nick Cohen? | 38 |
| 59. Did you ever meet Nick Cohen in Washington? | 38 |
| 60. Have you invested any money anywhere in the past year? | 39 |
| 61. Have you handled any moneys since Lincoln's Birthday this year? | 39 |
| 62. Have you had any property in your possession anywhere since Washington's Birthday this year? | 39 |
| 34 | |
| 63. Where have you been living? | 42 |
| 64. State them? (Referring to 'various places' where Arn- stein said he had been. | 43 |
| 65. Will you state where you were this morning, before you went to Court? | 51 |
| 66. Will you state your movements from the time you ar- rived in New York City this morning? | 51 |
| 67. Will you state with whom you spoke in New York today? | 52 |
| 68. Where did you get into that first automobile? | 71 |
| 69. Where did you go to when you left New York Febru- ary 10th or 11th this year? | 73 |
| 70. Where have you been since February 10th of this year? | 73 |
| 71. In how many different cities have you been since the 10th of February this year? | 73 |

| | Page. |
|--|-------|
| 72. What persons did you talk with since the 10th of February this year? | 73 |
| 73. What banks, trust companies, safe deposit companies, or brokers have you visited since the 10th of February this year? | 74 |
| 74. How often have you seen Nick Cohen since the 10th of February this year? | 74 |
| 75. How often have you seen Phil. Kastel since the 10th of February this year? | 74 |
| 35 | |
| 76. How often have you seen Charles Drukker since the 10th of February this Year? | 74 |
| 77. How often have you seen Ed. Strong since the 10th of February this year? | 74 |
| 78. Did you telephone to anyone today? | 74 |
| 79. Did you telephone to anyone yesterday? | 75 |
| 80. Have you made any statement about your affairs to anyone in the past six months? | 75 |
| 81. Have you authorized any such statement? | 75 |
| 82. Do you know any brokers in New York City? | 75 |
| 83. Have you ever authorized anybody to buy or sell any shares of stock for you? | 75 |
| 84. Have you ever authorized anybody to buy or sell any bonds for you? | 75 |
| 85. Have you ever borrowed any money in the past year? .. | 75 |
| 86. Have you loaned any money in the past year? | 75 |
| 87. Have you handled any money or any property of any nature, kind or description, in the last six months, excepting the \$500 which you have testified you received from your wife in February of this year, just before — left New York? | 75 |
| 88. Did you meet the Gondorfs at Atlantic City? | 76 |
| 89. Did you visit them in Atlantic City? | 76 |
| 90. Do you know O'Brien, the clerk at the Hotel Claridge? .. | 77 |
| 91. Do you know Mr. Washer, who has a cafe at 86th Street & Broadway? | 77 |
| 36 | |
| 92. What other source? (Referring to the source from which the Bankrupt received the information that his return to the city was being obstructed.) | 83 |
| 93. Where have you been since the time of the filing of the petition in bankruptcy in this case? | 2156 |

SCHEDULE D.

This is a schedule of questions put to the Bankrupt by counsel for the Trustee to which the Bankrupt objected on the ground that the answer might tend to incriminate him, which objection the Commissioner sustained, to which exception was taken by Counsel for the Trustee.

Arndstein's Testimony.

| | |
|---|------|
| 1. What other names? (Referring to the fact that <i>that</i> the Bankrupt has been known under various names? | 2 |
| 2. By what other names have you been known besides Jules Arndstein?..... | 2153 |
| 3. Where did you go on February 10th of this year?.... | 2155 |
| 4. Do you refuse to answer?..... | 2155 |
| 5. On the ground that the answer might tend to incriminate you? | 2155 |
| 6. In reference to the possible violation of a Federal Statute? | 2155 |
| 7. Now, what Federal Statute do you claim that you might possibly be indicted for violating?..... | 2155 |
| 8. How long have you known Nick Cohen?..... | 2160 |

| | |
|--|-------|
| 9. When did you see him last?..... | 2161 |
| 10. Did you ever receive any property of any kind from Nick Cohen? | 2161 |
| 11. Did you ever give any property of any kind, at any time, to Nick Cohen?..... | |
| 12. Have you ever had any correspondence with Nick Cohen since February 10th last?..... | 2161 |
| 13. Did you have any communication of any nature, kind or description with Nick Cohen since February 10th last?..... | 2162 |
| 14. Did you ever know? (Referring to where Nick Cohen lived? | 2162 |
| 15. Where did you see him (Nick Cohen) last; in what city? | 2163 |
| 16. Will you say whether you saw him this year? (Referring to Nick Cohen.)..... | 2163 |
| 17. Or last year? (Referring to when the witness last saw Nick Cohen.) | 2163 |
| 18. Or the year before? (Referring to when the witness last saw Nick Cohen.)..... | 2163 |
| 19. Or the year before that? (Referring to when the witness last saw Nick Cohen.)..... | 2163 |
| 20. Have you seen him during the past five years? (Referring to when the witness last saw Nick Cohen.).... | 2163 |
| 21. Have you ever been in business with Nick Cohen?.... | 2164 |

22. What have been the nature of your dealings with Nick Cohen? 2166
23. What dealings have you had with Nick Cohen during the past year? 2163
24. Do you remember going to Washington, D. C. with Nick Cohen on or about October 12th last?..... 2166
25. Do you remember meeting Joe Gluck and going with him at the same time?..... 2167
26. Do you remember meeting David Sullivan in the Pennsylvania Station at the same time?..... 2167
27. Do you remember meeting David Sullivan in Washington, D. C. on or about October 13th last?..... 2167
28. Do you remember receiving a satchel full of stolen securities from Joe Gluck in the Pennsylvania Station on October 12th last?..... 2167
29. You do not deny that?..... 2167
30. Do you deny that you and Joe Gluck and Nick Cohen proceeded to Washington on or about October 12th last with a satchel full of stolen securities, to your knowledge? 2167
31. Do you remember receiving some money from Nick Cohen in Washington, D. C. on or about October 13th last? 2168
32. Did you go to Boston with Joe Gluck and Nick Cohen in October last?..... 2169
33. Did you go to Baltimore, Maryland with Joe Gluck and Nick Cohen in October last?..... 2169
- 40
34. Did you go to Philadelphia with Joe Gluck and Nick Cohen in October last?..... 2169
35. Did you receive any securities of any nature, kind or description from Joe Gluck or Nick Cohen in any of those cities, in October and November last?..... 2169
36. Whom did you meet in Washington, D. C., in October last? 2169
37. Whom did you meet in Boston in October and November last? 2169
38. Whom did you meet in Philadelphia and Baltimore in October and November last?..... 2169
39. Whom did you meet in Hoboken, New Jersey, in October and November last? 2169
40. Did you visit any banks, trust companies, or safe deposit companies in October, November or December last, or any time this year?..... 2170
41. Do you know Joseph Gluck?..... 2170
42. Do you know Irving Gluck? 2170
43. Do you know Charles Drukker?..... 2170
44. Do you know Eddie Winkler?..... 2170

| | Page. |
|---|-------|
| 45. Where did you get the money? (Referring to the money which the bankrupt said he had in his possession and under his control.) | 2181 |
| 46. When did you get it? (Referring to the money which the Bankrupt said he had in his possession and under his control.) | 2181 |
| 41 | |
| 47. Did you get it this year? (Referring to the money which the Bankrupt said he had in his possession and under his control?) | 2181 |
| 48. Did you receive the money last year? (Referring to the money which the Bankrupt said he had in his possession and under his control.) | 2183 |
| 49. Did you receive it more then two years ago? (Referring to the money which the bankrupt said he had in his possession and under his control?) | 2183 |
| 50. Did you receive it more than three years ago? (Referring to the money which the Bankrupt said he had in his possession and under his control.) | 2183 |
| 51. Did you get it five years ago? (Referring to the money which the Bankrupt said he had in his possession and under his control.) | 2184 |
| 52. What bank accounts have you had in the past five years? | 2188 |
| 53. What bank accounts have you had in the past four years? | 2188 |
| 54. What bank accounts have you had in the past year? | 2188 |
| 55. What safe deposit boxes have you had in the past five years? | 2189 |
| 42 | |
| 56. What business were you in at the time of the filing of the petition in bankruptcy in this proceeding? | 2189 |
| 57. What business interests did you have at the time of the filing of the petition in bankruptcy in this proceeding? | 2189 |
| 58. What other property? (Referring to the testimony of the bankrupt that since the filing of the petition in bankruptcy in this proceeding he has had a little money from time to time.) | 2198 |
| 59. How much money have you had since the filing of the petition in bankruptcy in this proceeding? | 2199 |
| 60. Of what did this property consist which you say you had seven months before the filing of the petition in bankruptcy | 2199 |
| 61. Have you had any automobiles during the past year? | 2200 |
| 62. Have you had any diamonds or jewelry during the past year? | 2200 |

| | Page. |
|---|-------|
| 63. Have you had any stocks or bonds during the past year, either in your name or possession or under your control? | 2203 |
| 64. Have you had access to any safe deposit boxes during the past year? | 2203 |
| 65. Have you had any bank accounts any where in the United States during the past year? | 2203 |
| 66. Have you had any safe deposit boxes, either in your | |
| 43 name or in anyone else's name anywhere in the United States, during the past year? | 2204 |
| 67. Do you know Joseph Gluck? | 2204 |
| 68. When did you see Joseph Gluck last? | 2204 |
| 69. Have you seen him (Joseph Gluck) at all during the past five years? | 2204 |
| 70. Have you seen him (Joseph Gluck) at all during the past ten years? | 2204 |
| 71. Have you seen Joseph Gluck during the past year? | 2204 |
| 72. Have you seen him (Joseph Gluck) during the past six months? | 2205 |
| 73. Have you seen him (Joseph Gluck) at any time or place during the past ten years? | 2205 |
| 74. Did you ever receive any property of any kind, nature or description from Joseph Gluck? | 2205 |
| 75. Do you know Philip Kastel? | 2205 |
| 76. Who is he? | 2206 |
| 77. Do you know where Philip Kastel lives? | 2206 |
| 78. When did you see him last? (Philip Kastel.) | 2206 |
| 79. Where did you see him (Philip Kastel) last? | 2206 |
| 80. How long have you known him (Philip Kastel)? | 2207 |
| 81. Do you know where he (Philip Kastel) is now? | 2207 |
| 44 | |
| 82. Where was he (Philip Kastel) when you saw him last? | 2207 |
| 83. Have you been in communication with Philip Kastel during the past year? | 2207 |
| 84. Have you been in communication with Joseph Gluck during the past year? | 2207 |
| 85. Do you know one Ed. Winkler? | 2207 |
| 86. How long have you known Ed. Winkler? | 2207 |
| 87. Do you know where he (Ed. Winkler) is now? | 2208 |
| 88. Do you know where he (Ed. Winkler) lives? | 2208 |
| 89. When did you see him last (Ed Winkler)? | 2208 |
| 90. Did you ever receive any property from him (Ed. Winkler)? | 2208 |
| 91. Directly or indirectly? (Referring to property claimed to have been received by the bankrupt from Ed. Winkler). | |

| | Page. |
|---|-------|
| 92. Of any nature, kind or description? (Referring to property claimed to have been received by the bankrupt from Ed. Winkler)..... | 2208 |
| 93. Have you ever had any communication with him (Ed. Winkler) during the past year?..... | 2208 |
| 94. Do you know where Nick Cohen is?..... | 2208 |
| 95. How long have you known him (Nick Cohen)?..... | 2208 |
| 96. Do you know his (Nick Cohen) address?..... | 2208 |
| 97. Do you know where the Court could find him? (Nick Cohen) | 2209 |
| 45 | |
| 98. Do you know where a communication could be delivered to him? (Nick Cohen)..... | 2209 |
| 99. Have you had any communication with him (Nick Cohen) during the past year?..... | 2209 |
| 100. Did you ever receive any property from him (Nick Cohen) directly or indirectly?..... | 2209 |
| 101. Do you know Charles Druckker?..... | 2209 |
| 102. Well, do you know where he lives?..... | 2209 |
| 103. Can you give a description of him? (Charles Druckker) | 2209 |
| 104. When did you see him last? (Charles Druckker)..... | 2209 |
| 105. Where did you see him last? (Charles Druckker)..... | 2209 |
| 106. How long have you known him? (Charles Druckker)..... | 2209 |
| 107. Did you receive any property from him of any nature, kind or description during the past year?..... | 2210 |
| 108. Have you ever had any business transactions with Charles Druckker?..... | 2210 |
| 109. Or with Nick Cohen?..... | 2210 |
| 110. Or with Edward Winkler?..... | 2210 |
| 111. Or with Philip Kastel?..... | 2210 |
| 112. Or with Joseph Gluck?..... | 2210 |
| 113. Do you know David Sullivan?..... | 2210 |
| 114. Have you ever had any business dealings with him?.. | 2210 |
| 115. Did you ever receive any property from him? (David Sullivan) | 2210 |
| 46 | |
| 116. Did you ever give any property to him? (David Sullivan) | 2210 |
| 117. Do you know what city he (David Sullivan) lives in?.. | 2210 |
| 118. Will you say when you spoke with him last? (David Sullivan) | 2211 |
| 119. Do you know John Hogan?..... | 2211 |
| 120. Do you know where his (John Hogan) office is?.... | 2211 |
| 121. Did you ever have any business dealings with him? (Referring to John Hogan)..... | 2211 |
| 122. Did you ever have any communication with him during the past year? (Referring to John Hogan).. | 2211 |

| | Page. |
|---|-------|
| 123. Do you know Murray Fox?..... | 2211 |
| 124. Do you know where he (Murray Fox) lives?..... | 2211 |
| 125. Or what his (Murray Fox) business is?..... | 2211 |
| 126. Did you ever receive any property from him? (Murray Fox) | 2211 |
| 127. Do you know Kenneth Bernard?..... | 2211 |
| 128. Did you ever have any business dealings with him? (Kenneth Bernard)..... | 2211 |
| 129. Did you ever know Mortimer Bernstein?..... | 2212 |
| 130. Did you ever have any business dealings with him (Mortimer Bernstein)?..... | 2212 |
| 131. Did you ever give him (Mortimer Bernstein) any property of any nature, kind or description?..... | 2212 |
| 47 | |
| 132. Did you ever receive any property from him (Mortimer Bernstein) of any nature, kind or description?.... | 2212 |
| 133. How long did you know him before he (Mortimer Bernstein) died?..... | 2212 |
| 134. How well did you know him (Mortimer Bernstein)?.. | 2212 |
| 135. Do you know Louis Bleet?..... | 2212 |
| 136. Do you know where he (Louis Bleet) is now?..... | 2212 |
| 137. When did you see him (Louis Bleet) last?..... | 2212 |
| 139. Did you ever receive any property from him (Louis Bleet)? | 2213 |
| 140. Have you ever given any property to him (Louis Bleet)? | 2213 |
| 141. Have you ever had any communication with him of any kind during the past year? (Referring to Louis Bleet)? | 2213 |
| 142. Do you know Norman S. Bowles?..... | 2213 |
| 143. Did you ever meet him (Norman S. Bowles)?..... | 2213 |
| 144. Did you ever have any business transactions with him (Norman S. Bowles)?..... | 2213 |
| 145. Do you own any real estate now?..... | 2213 |
| 146. Do you know W. W. Easterday?..... | 2214 |
| 147. Well, did you ever see W. W. Easterday anywhere?... | 2214 |
| 148. Did you see W. W. Easterday at the Bretton Hall Hotel, New York City, on October 12th last?..... | 2214 |
| 149. Did you see him there with one Nick Cohen at that time? | 2214 |
| 48 | |
| 150. Do you know where W. W. Easterday lives?..... | 2215 |
| 151. Can you describe him (W. W. Easterday)?..... | 2215 |
| 152. Did you ever receive any property from him (W. W. Easterday)? | 2215 |
| 153. Did you ever give him any property? (Referring to W. W. Easterday)..... | 2215 |
| 154. Did you ever receive any money from him? (W. W. Easterday)? | 2215 |

| | Page. |
|---|-------|
| 155. Did you receive any money from him during October, November and December last year? (Referring to receipt of money by the Bankrupt from W. W. Easterday) | 2215 |
| 156. Or any time this year? (Referring to receipt of money by the Bankrupt from W. W. Easterday) | 2215 |
| 157. Well, if you did, will you say what you did with it? (Referring to receipt of money by the bankrupt from W. W. Easterday) | 2215 |
| 158. Did you meet W. W. Easterday in Washington last October and November? | 2215 |
| 159. Did you meet David Sullivan in Washington last October and November? | 2216 |
| 160. Did you meet Joseph Gluck in Washington last October and November? | 2216 |
| 161. Did you meet any of those persons in Boston, Philadelphia, and Baltimore, last October, November and December? | 2216 |
| 162. Were you ever in the Hotel Touraine last year? | 2216 |
| 49 | |
| 163. Were you in the Hotel Bellevue-Stratford in Philadelphia last Fall? | 2216 |
| 164. Were you at the Hotel Belvedere in Baltimore last Fall? | 2216 |
| 165. Who did you meet in those hotels last Fall? | 2216 |
| 166. Did you ever register in any hotel outside of New York under any other name than Arnold? | 2216 |
| 167. Did you ever go under any other name? | 2216 |
| 168. Have you been out of the United States during the past six months? | 2217 |
| 169. Have you been out of New York State during the past six months? | 2217 |
| 170. What cities have you visited during the past six months? | 2217 |
| 171. With what persons have you talked during the past three months? | 2217 |
| 172. What banks, trust companies, or safe deposit boxes have you been to in the past three months? | 2217 |
| 173. Have you been to Cleveland, Ohio? | 2217 |
| 174. Did you there meet Cheeks Ginsberg? | 2217 |
| 175. Or Roughy Ginsberg? | 2217 |
| 176. Or Paddy Goldberg? | 2217 |
| 177. Or Forrest L. Graves? | 2218 |
| 178. Or E. P. Strong? | 2218 |
| 179. Or Dona Arkin? | 2218 |
| 180. Or Samuel Haas? | 2218 |

181. Do you know whether this lawyer, Samuel Haas, has been convicted in Cleveland, Ohio?..... 2-21
182. Was he convicted in reference to any transaction which you had with him?..... 2-21
183. Did you ever have any transactions with him?..... 2-21
184. Is E. P. Strong your attorney in Cleveland?..... 2-21
185. Is Samuel Haas an associate of E. P. Strong?..... 2-21
186. Have you ever had any business dealings with E. P. Strong?..... 2-21
187. Did you have a room there? (Referring to the Winton Hotel in Cleveland, Ohio where the Bankrupt said he was on February 23rd, 1920)..... 2-22
188. Did you meet E. P. Strong in that hotel? (Referring to February 23rd, 1920 at the Winton Hotel in Cleveland, Ohio,..... 2-22
189. Do you know Nate Cook from Cleveland?..... 2-22
190. Do you know Henry Beckerman of Cleveland?..... 2-22
191. Do you know Samuel Doerfler, D-o-e-r-f-l-o-e-r, of Cleveland?..... 2-22
192. Do you know Ernest Bernstein of Cleveland?..... 2-22
193. Do you know Aleck Bernstein of Cleveland?..... 2-22
194. Have you ever had any business transactions with any of these persons?..... 2-22
195. Have you ever delivered any securities to any of these persons?..... 2-22
196. Or received any money from them? (Referring to Nate Cook, Henry Beckerman, Samuel Doerfler, Ernest Bernstein, Aleck Bernstein)..... 2-22
197. Have you at any time during the past six months heard any conversation between Joe Gluck and Nick Cohen?..... 2-23
198. Do you know under what different names Nick Cohen has been known?..... 2-23
199. Do you know whether he (Nick Cohen) is an ex-convict?..... 2-23
200. Do you know whether he is the man who was convicted under the name of Harry Davis and served a term in a Cleveland Penitentiary?..... 2-23
201. Do you know whether he has been known as Mack?..... 2-23
202. Have you been known as George?..... 2-23
203. Do you know Arthur Ecrement?..... 2-23
204. Did you ever have any business dealings with him (Arthur Ecrement)?..... 2-23
205. Did you ever hand him any securities, directly or indirectly? (Referring to Arthur Ecrement)..... 2-23
206. Or receive any money from him (Arthur Ecrement) directly or indirectly?..... 2-23
207. Did you meet him (Ecrement) in Chicago recently?..... 2-23
208. Did you meet Phil Kastel in Chicago recently?..... 2-23

| | Page. |
|---|-------|
| 209. Did you meet Charles Druckker in Chicago recently? | 2226 |
| 52 | |
| 210. Did you meet Ed. Winkler in Chicago recently? | 2226 |
| 211. Did you ever, in the past three months, hand any one of those persons any securities of any nature, kind or description? (Referring to Kastel, Druckker and Winkler) | |
| 212. Or receive any money from them? (Referring to Kastel, Druckker and Winkler) | 2226 |
| 213. Do you know Ed. Furey? | 2226 |
| 214. Did you ever see Ed. Furey? | 2226 |
| 215. Did you ever have any business dealings of any kind with him? (Ed. Furey) | 2226 |
| 216. Did you ever receive any property from him of any nature, kind or description? (Referring to Ed. Furey) | |
| 217. Or give him (Ed. Furey) any? (property) | 2226 |
| 218. Do you know James Kean of Montreal? | 2227 |
| 219. Or James Kean of Perth, Ontario? | 2227 |
| 220. Did you ever have any dealings with him (James Kean) of any nature, kind or description? | 2227 |
| 221. Do you know Joseph Klein? | 2227 |
| 222. Did you ever have any business dealings with him (Joseph Klein) of any nature, kind or description? | 2227 |
| 223. Did you ever give to him (Joseph Klein) or receive from him any property of any nature, kind or description? | 2227 |
| 53 | |
| 224. Do you know Don Lloyd, or Dan Lloyd, either one? | 2227 |
| 225. Did you ever have any dealings with either one of those persons? (Referring to Don Lloyd and Dan Lloyd) | 2227 |
| 226. Did you ever give them (Don Lloyd and Dan Lloyd) any property? | 2227 |
| 227. Or receive any from them? (Don Lloyd and Dan Lloyd) | 2227 |
| 228. Do you know Joe Marino? | 2228 |
| 229. Or Sam Gireau? | 2228 |
| 230. Or Michael Radice, R-a-d-i-c-e? | 2228 |
| 231. Or George Hackett? | 2228 |
| 232. Or John Loomis? | 2228 |
| 233. Or Frank Bradford? | 2228 |
| 234. Did you ever have any business dealings with them (Referring to Marino, Gireau, Radice, Hacket, Loomis and Bradford) of any nature, kind or description? | 2228 |
| 235. Did you ever give them any property? (Referring | |

| | | |
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| | to the above named persons)..... | Page 2228 |
| 236. | Or receive any from them? (Referring to the above named persons) | 2228 |
| 237. | Have you had any communication with any of these persons about whom I have asked you, at any time during the past three months?..... | 2228 |
| 238. | Do you know whether Nick Cohen has? Referring to the fact that the Bankrupt has an account in the Pacific Bank) | 2230 |
| 54 | | |
| 239. | Or any of these persons about whom I have questioned you? (Referring to the fact as to whether any of the persons referred to in this testimony had a bank account in the Pacific Bank to the knowledge of the Bankrupt) | 2230 |
| 240. | Have you any there? (Referring to an account in The Pacific Bank)..... | 2231 |
| 241. | Have you any safe deposit box there? (Referring to The Pacific Bank)..... | 2231 |
| 242. | Do you know anyone who has?..... | 2231 |
| 243. | Do you know Mattie Pandolfi?..... | 2231 |
| 244. | Do you know Joe Peppe?..... | 2231 |
| 245. | Or Jimmy Ryan, otherwise known as the Postal Kid? | 2231 |
| 246. | Or Frank Thompson? | 2231 |
| 247. | Did you deliver any property of any nature, kind or description to any of those persons in the past six months? (Referring to Pandolfi, Peppe, Ryan and Thompson) | 2231 |
| 248. | Did you receive any from them? (Referring to Pandolfi, Peppe, Ryan and Thompson)..... | 2231 |
| 249. | Have you been in communication with any of them during that time? (Referring to Pandolfi, Peppe, Ryan and Thompson) | 2231 |
| 55 | | |
| 250. | Did you ever live at the Wellington Hotel in this city? | 2234 |
| 251. | Have you been there during the past year?..... | 2234 |
| 252. | Did you ever receive any money from David Sullivan in New York City?..... | 2234 |
| 253. | During the past year? (Referring to any money received from David Sullivan in New York City?)... .. | 2235 |
| 254. | Did you receive any money from David Sullivan any other place during the past year?..... | 2235 |
| 255. | Did you receive any money from Nick Cohen at any place during the past six months..... | 2235 |
| 256. | Or during the past year?..... | 2235 |
| 257. | Did you give any money to your wife during the past year? | 2235 |
| 258. | Have you been in Atlantic City during the past three months? | 2240 |

| | Page. |
|---|-------|
| 259. Have you been in or near Pittsburgh during the past three months? | 2240 |
| 260. Do you know anyone by the name of Henry Stern? .. | 2240 |
| 261. Have you sent any securities, directly or indirectly to any other country during the past six months? | 2241 |
| 262. Have you had any communication, directly or indirectly with anyone in any foreign country, during the past six months? | 2241 |
| 263. Do you remember meeting Joe Gluck and Nick Cohen at Washers Cafe last October? | 2241 |
| 56 | |
| 264. Do you remember going with them to the Pennsylvania Station? (Referring to Joseph Gluck and Nick Cohen.) | 2242 |
| 265. Do you remember meeting Joe Gluck and Nick Cohen at the Hotel Endicott in this City, last November? .. | 2242 |
| 266. Do you know anybody in Cleveland by the name of Feder, F-e-d-e-r? | 2242 |
| 267. Were you at the Hotel Hollender in Cleveland during the past three months? | 2242 |
| 268. Where you at the home of Dona Arkin while you were in Cleveland during the past three months? | 2243 |
| 269. But you did meet her (Dona Arkin) at the Hotel Winton, didn't you? | 2243 |
| 270. Or Fannie Brice's mother; you did not meet her during the past six months? | 2244 |
| 271. Would that incriminate you, or tend to? (Referring to meeting Frannie Brice's Mother) | 2244 |
| 272. Were you at any gambling houses in Cleveland during the past three months? | 2245 |
| 273. Were you in any gambling houses anywhere in the United States during the past three months? | 2245 |
| 274. Were you living on the gains of gambling houses during the past three months | 2245 |

SCHEDULE E.

This is a schedule of questions put to the Bankrupt by counsel for the Trustee, to which the Bankrupt objected on the ground that the answer might tend to incriminate him, which objection the Commissioner sustained, and refused to instruct the witness, to which refusal counsel for the Trustee excepted.

1. Were you not in possession of a satchel containing a large amount of securities, at the Pennsylvania Railroad Station, and on a train between New York and Washington, when in possession of that claimed satchel containing such securities, in October, 1919? 2339

| | Page |
|--|------|
| 2. Did you not have in your possession in October, 1919, at the Pennsylvania Railroad Station in New York City, and on the train between New York and Washington, a satchel full of securities | 2360 |
| 3. Mr. Arnstein, have you had access to any safe deposit box during the past year? | 2361 |
| 4. Have you had any bank account anywhere in the United States during the past year? | 2362 |
| 58 | |
| 5. Have you had any safe deposit box either in your name or in the name of any other person, to which you had access, anywhere in the United States, during the past year? | 2362 |
| 6. What is the largest you recall? (Referring to the Bankrupt's balance in the Pacific Bank, the Bankrupt having admitted that he had an account in the Pacific Bank.) | 2363 |
| 7. What have been the nature of your dealings with Nick Cohen? | 2364 |
| 8. What dealings have you had with Nick Cohen during the past year? | 2364 |
| 9. Do you remember going to Washington, D. C. with Nick Cohen on or about October 12th last? | 2366 |
| 10. Do you remember meeting Joe Gluck and going with him at the same time? | 2366 |
| 11. Do you remember meeting David Sullivan in the Pennsylvania Station at the same time? | 2366 |
| 12. Do you remember meeting David Sullivan in Washington, D. C. on or about October 13th last? | 2366 |
| 13. Did you receive any securities of any nature, kind or description from Joe Gluck or Nick Cohen in Baltimore, Maryland, or New York City, Philadelphia, or Boston, in October or November last? | 2367 |
| 59 | |
| 14. Do you know Joseph Gluck, Irving Gluck, Charles Drucker, Eddie Winkler, or any of them? | 2367 |
| 15. Where did you get the money? (Referring to the fact that the witness had testified that he had certain monies in his possession and under his control.) | 2370 |
| 16. Did you get it this year? (Referring to moneys above referred to.) | 2370 |
| 17. Mr. Arnstein, have you delivered any securities to any person, within four months next preceding the filing of the bankrupt petition? | 2371 |
| 18. In answer to the question whether you had any property of any nature, kind or description since the filing of the petition in bankruptcy in this proceeding, you answered: "Yes; I have had a little money from time to time." From what source did you get that | |

| | Page. |
|--|-------|
| money? | 2372 |
| 19. Have you had in your possession at any time since the filing of the petition in bankruptcy, any diamonds or jewelry? | 2373 |
| 20. Have you had any stocks or bonds during the past year, either in your name or possession, or under your control? | 2374 |
| 21. Have you had access to any safe deposit boxes during the past year? | 2374 |
| 22. Did you ever receive any property of any nature, kind or description from Joseph Gluck | 2374 |
| 23. Do you know Philip Kastel? | 2374 |
| 24. Have you been in communication with Philip Kastel during the past six months? | 2375 |
| 25. Have you been in communication with Joseph Gluck during the past year? | 2375 |
| 26. Did you deliver any securities to Nick Cohen at any time in October, November or December 1919 or January 1920? | 2375 |
| 27. Do you know Ed Winkler? | 2376 |
| 28. When did you see Ed. Winkler last? | 2376 |
| 29. Did you ever deliver or transfer any securities to Nick Cohen since the first of October last. | 2376 |
| 30. Did you ever receive any property from Ed. Winkler? | 2376 |
| 31. Did you deliver any securities, or send any securities to David Sullivan, since October 1st, 1919? | 2377 |
| 32. Had you any business transactions with David Sullivan since October 1st, 1919? | 2377 |
| 33. Did you ever receive any property from David Sullivan since October 1st 1919? | 2377 |
| 34. Did you have any business transactions with W. W. Easterday at any time since the first of October, 1919? | 2378 |
| 35. Did you ever receive any property from W. W. Easterday? | 2378 |
| 36. Did you ever give any property, or hand over any property to W. W. Easterday, since the 1st of October, 1919? | 2379 |
| 37. Did you ever receive any money from W. W. Easterday since the 1st of October, 1919? | 2379 |
| 38. Did you at any time in last October or November meet David Sullivan? | 2379 |
| 39. What banks, trust companies, or safe deposit companies have you been to in the past three months? | 2379 |
| 40. Did you, since the 1st of October, 1919, place any securities in any safe deposit box anywhere? | 2380 |
| 41. Have you at any time since the 1st of October 1919 sold or transferred any stocks or bonds? | 2380 |

| | Page. |
|--|-------|
| 42. Have you received, since the 1st of October, 1919, any moneys purporting to be the proceeds of any stocks or bonds, and if so, in what amount? | 2380 |
| 43. Do you refuse to state whether you know Nate Cook of Cleveland, Mr. Arndstein? | 2381 |
| 44. Do you refuse to state whether you know Henry Beckerman of Cleveland? | 2381 |
| 62 | |
| 45. Do you know Samuel Doerfler of Cleveland?..... | 2381 |
| 46. Do you know either Ernest Bernstein of Cleveland or Aleck Bernstein of Cleveland?..... | 2382 |
| 47. Do you know under what different names Nick Cohen has been known?..... | 2381 |
| 48. Did you ever have any business dealings with Nick Cohen since October 1st, 1919?..... | 2384 |
| 49. Do you know Arthur Ecrement?..... | 2384 |
| 50. Did you ever deliver any securities to Authur Ecrement since October 1st, 1919?..... | 2384 |
| 51. Did you receive any money, directly or indirectly from Arthur Ecrement since October 1st, 1919?..... | 2385 |
| 52. Have you, at any time since the filing of the Bankruptcy petition herein, delivered any property over to Arthur Ecrement or Phil. Kastel, Charles Druckker Ed. Winkler, or Ed. Furey, or any of them?..... | 2385 |
| 53. Did you receive, from any of those men, during that period any money or securities?..... | 2385 |
| 54. Didn't you draw a check on that bank account (The Pacific Bank account) since the 1st of January, 1920, for about \$16,000. | 2387 |
| 55. Did you receive any money from David Sullivan any other place than New York City during the past year? | 2387 |
| 63 | |
| 56. Do you decline to answer whether you received any money from David Sullivan in New York City?.... | 2387 |
| 57. Have you given any money to your wife since the 1st of October, 1919?..... | 2388 |
| 58. Have you sent any securities, directly or indirectly to any other country from this country, during the past six months?..... | 2389 |
| 59. Did you meet Joe Gluck and Nick Cohen at the Hotel Endicott in this City last November?..... | 2389 |
| 60. Were you at any gambling houses in Cleveland during the past three months. | 2390 |
| 61. Were you in any gambling houses anywhere in the United States during the past three months?..... | 2390 |
| 62. Did you lose any funds in any gambling house during the past five months?..... | 2390 |
| 63. Did you at any time since October 1st, 1919, receive any profits of any gambling houses?..... | 2391 |

Arnstein's Testimony.

Page.

64. Well, who was with you just before you met your wife and Mr. Fallon?..... 79
- 64 District Court of the United States for the Southern District of New York.

No. 27525.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Affidavit of Joseph K. Guerin.

STATE OF NEW YORK,
County of New York, ss:

Joseph K. Guerin, being duly sworn, deposes and says:

I. I am over the age of twenty-one years and a clerk in the office of Saul S. Myers, Esq., the attorney for the Trustee in Bankruptcy herein.

II. On May 24th, 1920, I served the annexed order of Adjudication in Bankruptcy on the Bankrupt at the United States Post Office Building in the Borough of Manhattan, In the City of New York by delivering to and leaving with him a certified copy of said Order of Adjudication.

III. On the same day I delivered a certified copy thereof to Messrs. Fallon & McGee, the Bankrupt's attorneys herein, as more fully appears from their admission of service on the back of the annexed Order of Adjudication.

65 IV. I attended before Commissioner Gilchrist on May 24th, 1920, on the examination of the Bankrupt herein under Section 21 A of the National Bankruptcy Act. The Bankrupt testified at that time that he had known of the adjudication of bankruptcy against him before coming to New York on May 15th, 1920, that he had not prepared or filed any schedules of assets and liabilities and had not attempted to prepare any, and was not engaged in preparing any. The testimony on that point is as follows:

"Q. From what newspaper did you receive your information of the adjudication of the bankruptcy against you?

A. I do not know which one.

Q. But you did learn of that before you returned to this city?

A. I cannot fix any time, sir, I do not know.

Q. You do not know whether you knew of it before you came back to the city?

A. I knew of it before I came back but I do not know what time.

Q. Have you prepared any list of your assets and liabilities in this bankruptcy proceeding?

A. I have not prepared anything, sir, at no time.

Q. Are you at work preparing them?

A. No, sir.

Q. Have you made any effort so far to prepare any such schedules of your assets and liabilities in this bankruptcy proceeding?

A. No, sir."

JOSEPH K. GUERIN.

Sworn to before me this 1st day of June, 1920.

A. MALES,
Notary Public.

Bronx Co. Clerk's No. 66.

Bronx County Register's No. 2161.

New York County Clerk's No. 449.

New York County Register's No. 1400.

66 In the District Court of the United States for the Southern
District of New York.

In Bankruptcy.

In the Matter of NICHOLAS ARNSTEIN, Alias J. W. ARNOLD, Alias
JAMES WILFRED ADAIR, &c., Bankrupt.

At New York City, in said District, on the 4th day of March, A. D. 1920, before the Honorable Learned Hand, Judge of the said Court in Bankruptcy, the petition of National Surety Company, that Nicholas Arnstein be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered and bankrupt having been served and defaulted in pleading, the said Nicholas Arnstein, alias J. W. Arnold, alias James Wilford Adair, alias James W. or J. W. Ames, alias McCormick, alias Borach, alias Brice, is hereby declared and adjudged a bankrupt accordingly.

And it is further ordered that the said bankrupt file schedules in triplicate as required by law within ten days from the date hereof.

And it is further ordered that the said matter be referred to Seaman Miller, one of the referees in bankruptcy of this Court, to take all such further proceedings therein as are required by said Acts of Congress, and all such acts therein as the Court might take or perform, except such as by law or the general orders of the Supreme Court are required to be performed by the Judge; and that the said bankrupt shall attend before said referee on the 9th day of March, 1920, at 10 o'clock A. M., and thenceforth shall submit to such orders as may be made by said referee or by the Court relating to his said bankruptcy.

Witness, the Honorable Learned Hand, Judge of the said Court, and the seal thereof, at The City of New York, in said District, on the 4th day of March, A. D. 1920.

LEARNED HAND,
District Judge.

ALEX GILCHRIST, JR.,
Clerk.

A true copy.

[SEAL.] ALEX GILCHRIST, JR.,
Clerk.

Schedule A (1).
Form 451.H. K. Brewer & Co., Incorporated,
58 Liberty St.—New York—306 Madison Ave.,
Stationers and Law Blank Publishers.

SCHEDULE A.

(1) *Statement of all Debts of Bankrupt.*

Statement of all creditors who are to be paid in full, or to whom priority is secured by law.

| Claims which have priority. | Reference to ledger or voucher. | Names of creditors. | Residence (if un- known, that fact must be stated.) | Where and when contracted. | Nature and consideration of the debt, and whether con- tracted as partner or joint contractor; and if so, with whom. | Amount |
|--|---------------------------------------|------------------------|---|----------------------------------|--|--------|
| | | None. | | | | 00 00 |
| (1.) Taxes and debts due and owing to the United States. | | | | | | |
| (2.) Taxes due and owing to the State of — or to and county, district, or municipality there- of. | | None. | | | | 00 00 |

(3.)

Wages due workmen.

Wages due workmen,
clerks or servants to
an amount not exceed-
ing \$300 each, earned
within three months
before filing the peti-
tion.

..... None. 00 00

(4.)

Other debts having pri-
ority by law.

..... None. 00 00

Total ...

JULES W. ARNDSTEIN,
Petitioner.

Schedule A. (2).
Form 452.

H. K. Brewer & Co., Incorporated,
58 Liberty St.—New York—306 Madison Ave.,
Stationers and Law Blank Publishers.

68

SCHEDULE A.

(2) *Creditors Holding Securities.*

(N. B.—Particulars of securities held, with dates of same and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by acts of Congress relating to bankruptcy, and whether contracted as partner or joint contractor with any other person; and if so, with whom.)

| Reference to ledger or voucher. | Names of creditors. | Residences (if un- known, that fact must be stated.) | Description of securities. | When and where debts were contracted. | Value of securities. | Amount of debts. |
|---------------------------------------|------------------------|--|-------------------------------|---|-------------------------|---------------------|
| | None..... | None..... | None..... | None..... | None..... | None..... |

Total.....

00

JULES W. ARDNSTEIN,
Petitioner.

69 Schedule A, No. 3,
No. 453.

H. K. Brewer & Co., Incorporated,
58 Liberty Street—New York—306 Madison Ave.,
Stationers & Law Blank Publishers.

SCHEDULE A.

(3) Creditors Whose Claims are Unsecured.

[N. B.—When the name and residence [or either] of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.]

| Reference to ledger or voucher. | Names of creditors. | Residence (if unknown, that fact must be stated.) | When and where contracted. | Nature and consideration of the debt and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner, or joint contractor with any other person; and, if so, with whom. | | Amount. |
|---------------------------------------|---------------------|---|-------------------------------|--|--------|-----------|
| | | | | | | |
| | Fanny Arndstein | 1 W. 83 | Feb. 11, 1920 | Borrowed | | 9,000.00 |
| | " | 1 W. 83 | Feb. 15, 1920 | Money advanced on payment of obligation | | 5,000.00 |
| | " | 1 W. 83 | Feb. 9, 1920 | Borrowed | | 500.00 |
| | | | | Total | 14,500 | 14,500.00 |

JULES W. ARNDSTEIN, *Petitioner*.

70 Schedule A (4).
Form 454.

H. K. Brewer & Co., Incorporated,
58 Liberty Street—New York—306 Madison Ave.,
Stationers and Law Blank Publishers.

SCHEDULE A.

(4) *Liabilities on Notes or Bills Discounted which Ought to be Paid by the Drawers, Makers, Acceptors or Indorsers.*

[N. B.—The date of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.]

| Reference to ledger or voucher. | Names of holders as far as known. | Residence if unknown, that fact must be stated.) | Place where contracted. | Nature of liability, whether same was contracted as partner or joint con- tractor, or with any other person; and, if so, with whom. | Amount. |
|---------------------------------------|--------------------------------------|--|----------------------------|--|------------|
| None, | None, | None, | None, | None, | None |
| | | | | | Total 0000 |

JULES W. ARNDSTEIN, *Petitioner.*

71 Schedule A, (5).
Form 455.

Stationers, H. K. Brewer & Co., New York,
35 Nassau Street, 58 Liberty Street, 306 Madison Avenue.

SCHEDULE A.

(5) Accommodation Paper.

[N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as a drawer, maker, acceptor, or indorser, thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.]

| Reference to ledger or voucher. | Names of holders. | Residence (if unknown, that fact must be stated.) | Names and residence of persons accommodated. | Place where contracted. | Whether liability was contracted as partner or joint contractor, or with any other person; and, if so, with whom. | Amount. |
|---------------------------------------|-------------------|---|---|----------------------------|--|------------|
| | None | None | None | None | None | None |
| | | | | | | Total 0000 |

JULIUS W. ARNDSTEIN, *Petitioner*.

72 Oath to Schedule A.
No. 456.

H. K. Brewer & Co., Incorporated,
58 Liberty Street—New York—306 Madison Ave.,
Stationers and Law Blank Publishers.

Oath to Schedule A.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this 10 day of June A. D. 1920, before me personally came Jules W. Arndstein the person mentioned in and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, in accordance with the acts of Congress relating to bankruptcy.

Subscribed and sworn to before me this 10 day of June A. D. 1920.

— — —

H. K. Brewer & Co., Incorporated,
58 Liberty St.—New York—306 Madison Ave.,
Stationers & Law Blank Publishers.

Schedule B (1)—Form 457.

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SCHEDULE B.

(1) *Statement of All Property of Bankrupt.*

Real Estate.

Location and description of real estate owned by debtor, or held by him.

| Incumbrances thereon, if any, and dates thereof. | Statement of particulars relating thereto. | Estimated value. |
|--|--|---------------------|
| None | None | None |
| Total | | 00.00 |

JULES W. ARNISTEIN,
Petitioner.

SCHEDULE B.

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(2) Personal Property.

| | | |
|--|------------|--------|
| a.—Cash on hand, none..... | None | 00. 00 |
| b.—Bills of exchange, promissory notes, or securities of any description (each to be set out separately), none..... | None | |
| c.—Stock in trade in no business of —, at — value of..... | None | |
| d.—Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz., wearing apparel nominal | | 00. 00 |
| e.—Books, prints, and pictures, viz. | None | |
| f.—Horses, cows, sheep and other animals (with number of each) viz. | None | |
| g.—Carriages and other vehicles, viz. | None | |
| h.—Farming stock and implements of husbandry, viz. | None | |
| i.—Shipping and shares in vessels, viz. | None | |
| k.—Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated, viz. | None | |
| l.—Patents, copyrights and trade-marks, viz. | None | |

b.—Patents, copyrights and trade-marks, viz. None.
 m.—Goods or personal property of any other description, with the
 place where each is situated, viz. None.

Total 60,00

JULES W. ARNSTEIN,
Petitioner.

SCHEDULE B.

(3) *Chances in Action.*

Schedule B (3). H. K. Brewer & Co., Stationers, 35 Nassau St., 58 Liberty St. and 503 Fifth Avenue, N. Y.
 Form 459.

a.—Debts due petitioner on open account. None.
 b.—Stocks in incorporated companies, interest in joint stock com-
 panies, and negotiable bonds. None.
 c.—Policies of insurance. None.
 d.—Unliquidated claims of every nature, with their estimated value. None.
 e.—Deposits of money in banking institutions and elsewhere. Pacific Bank, 49th Street Branch. . . 18,000.00

Total 18,000.00

JULES W. ARNSTEIN,
Petitioner.

Schedule B (4).
Form 460.

H. K. Brewer & Co., Incorporated,
58 Liberty St.—New York—306 Madison Ave.,
Stationers & Law Blank Publishers.

SCHEDULE B (4).

76

Property in reversion, remainder, or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge.

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, as far as known to the debtor.]

| General interest. | Particular description. | Supposed value of my interest. |
|--|-------------------------|--------------------------------|
| Interest in land..... | None. | |
| Personal property | None. | |
| Property in money, stock, shares, bonds, annuities, etc..... | None. | |
| Rights and powers, legacies and bequests..... | None | 00.00 |
| Total | | |

Property heretofore conveyed for benefit of creditors.

Amount realized
from proceeds of
property conveyed.

What portion of debtor's property has been conveyed by deed of as-
signment, or otherwise, for benefit of creditors; date of such deed,
name and address of party to whom conveyed; amount realized
therefrom, and disposal of same, so far as known to debtor.

None.

What sum or sums have been paid to counsel, and to whom, for serv-
ices rendered or to be rendered in this bankruptcy.

None 00.00

Total

JULES W. ARNDSTEIN,
Petitioner.

Schedule B (5).
Form 461.

H. K. Brewer & Co., Incorporated,
58 Liberty St.—New York—306 Madison Ave.,
Stationers & Law Blank Publishers.

77 SCHEDULE B (5).

A particular statement of the property claimed as exemption; and if any portion of it is real estate, its location, to bankruptcy, giving each item of property and its value exempted from the operation of the acts of Congress relating to description and present use.

Valuation.

Military uniform, arms, and equipments..... None.

Property claimed to be exempted by State laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the State creating the exemption.

Total....

JULES W. ARNDSTEIN,
Petitioner.

Schedule B (6).
Form 462.

H. K. Brewer & Co., Incorporated,
58 Liberty St.—New York—306 Madison Ave.,
Stationers & Law Blank Publishers.

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SCHEDULE B.

(6) *Books, Papers, Deeds, and Writings Relating to Bankrupt's Business and Estate.*

The following is a true list of all books, papers, deeds and writings relating to my trade, business, dealings, estate, and effects, or any part thereof, which at the date of this petition, are in my possession, or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit or advantage; and also of all others which have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books. None.

Deeds. None.

Papers. None.

JULES W. ARNDSTEIN,
Petitioner.

Oath to Schedule B.
No. 463.

H. K. Brewer & Co., Incorporated,
58 Liberty St.—New York—306 Madison Ave.,
Stationers and Law Blank Publishers.

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Oath to Schedule B.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this 10th day of June, A. D. 1920, before me personally came Jules W. Arndstein the person mentioned in and who subscribed to the foregoing schedule, and who being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the acts of Congress relating to bankruptcy.

Subscribed and sworn to before me this 10 day of June, A. D. 1920.

H. K. Brewer & Co., Incorporated,
58 Liberty St.—New York—306 Madison Ave.,
Stationers & Law Blank Publishers.

Summary—Form 464.

& 81 *Summary of Debts and Assets.*

[From the Statements of the Bankrupt in Schedules A and B.]

| | | | |
|---------------------------|-----|---|------------------|
| Schedule A | 1 | (1) Taxes and debts due United States | None |
| " " | 1 | (2) Taxes due States, counties, districts and municipalities | |
| " " | 1 | (3) Wages | |
| " " | 1 | (4) Other debts preferred by law. | |
| Schedule A | 2 | Secured claims | 14,500. |
| Schedule A | 3 | Unsecured claims | |
| Schedule A | 4 | Notes and bills which ought to be paid by other parties thereto | |
| Schedule A | 5 | Accommodation paper | |
| Schedule A, total | | | <u>14,500.00</u> |
| Schedule B | 1 | Real-Estate | |
| Schedule B | 2-a | Cash on hand | |
| " " | 2-b | Bills, promissory notes and securities | |
| " " | 2-c | Stock in trade | |
| " " | 2-d | Household goods, &c. | |
| " " | 2-e | Books, prints and pictures | |
| " " | 2-f | Horses, cows and other animals | |
| " " | 2-g | Carriages and other vehicles | |
| " " | 2-h | Farming stock and implements | |
| " " | 2-i | Shipping and shares in vessels | |
| " " | 2-k | Machinery, tools, &c. | |
| " " | 2-l | Patents, copyrights and trade-marks | |
| " " | 2-m | Other personal property | |
| Schedule B | 3-a | Debts due on open accounts | |
| " " | 3-b | Stocks, negotiable bonds, &c. | |
| " " | 3-c | Policies of insurance | |
| " " | 3-d | Unliquidated claims | |
| " " | 3-e | Deposits of money in banks and elsewhere | 15,000.00 |

| | |
|--------------------------------|--|
| Schedule B.... 4 | Property in reversion, remainder, trust, &c..... |
| Schedule B.... 5 | Property claimed to be excepted |
| Schedule B.... 6 | Books, deeds and papers... |
| Schedule B, total... 18,000.00 | |

82 United States District Court, Southern District of New York.

In the Matter of NICHOLAS ARNDSTEIN, Bankrupt.

Motion to Punish for Contempt.

Saul S. Myers, Solicitor for Trustee; Selden Bacon, Counsel.

William J. Fallon, Solicitor for Bankrupt; James M. Osborne, Counsel.

AUGUSTUS N. HAND, *District Judge:*

The Bankrupt has refused to answer questions relating to his property, asserting his constitutional privilege. I have no doubt that the answers might furnish information which would render him liable to prosecutions in the federal courts for concealment of assets, to which prosecutions alone the privilege extends. *Ensign v. Commonwealth*, 227 U. S. 592.

However undesirable it may be that the Bankrupt should be exempt from examination as to the disposition of his property, I find the overwhelming weight of authority sustains the asserted privilege. Indeed, only one case of importance (*Mackel v. Rochester*, 102 Fed. at p. 317) seems to deny it, and there the court based its decision upon *Brown v. Walker*, 161 U. S. 591, where the statute gave a broader immunity than Sec. 7 (9) of the Bankruptcy Act. In this district, various decisions uphold the privilege. *In re Shera*, 114 Fed. 207; *In re Feldstein*, 103 Fed. 269; *In re Kanter*, 117 Fed. 356. See also *Carey v. Donohue*, 209 Fed. 328, at p. 332, where the Court of Appeals of the Sixth Circuit sustained the bankrupt's right to refuse to answer. See also *In re Scott*, 95 Fed. 815; *In re Rosser*, 96 Fed. 305; *In re Nachman*, 114 Fed. 995; *United States v. Goldstein*, 132 Fed. 789; *In re Walsh*, 104 Fed. 518; *United States v. Rhodes*, 212 Fed. 518.

In view of the foregoing body of authority, I must sustain the privilege.

The decisions of the Supreme Court in *Matter of Harris*, 221 U. S. 274, and *Johnson v. United States*, 228 U. S. 457, in my view distinctly involve the existence of a general privilege on the part of the bankrupt. Justice Holmes said that he could not prevent the use of his books in a criminal proceeding because they no longer belonged to him and were not produced by him, but by the trustee. The opinion reads:

"A party is privileged from producing the evidence but not from its production. The transfer by bankruptcy is no different from a transfer by execution of a volume with a confession written on the fly leaf. * * *

"It is true that the transfer of the books may have been against the defendant's will, but it is compelled by the law as a necessary incident to the distribution of his property, not in order to obtain criminal evidence against him. Of course a man cannot protect his property from being used to pay his debts by attaching to it a disclosure of crime. If the documentary confession comes to a third hand *alio intuitu*, as this did, the use of it in court does not compel the defendant to be a witness against himself."

If the bankrupt had possessed no general privilege under the Fifth Amendment, why was all this refinement of reasoning necessary to sustain the use of his books before the Grand Jury in *Johnson v. United States*, *supra*.

The motion to punish for contempt is denied.

A. N. H., D. J.

June 28, 1920.

84 United States District Court, Southern District of New York.

#595.

In the Matter of NICHOLAS ARNDSTEIN, Bankrupt.

Fallon & McGee, Attorneys for Bankrupt.
Saul S. Myers, Attorney for Petitioning Creditors.

AUGUSTUS N. HAND, *District Judge*:

It is the rule in this District that a bankrupt who has filed schedules is subject to examination as to the property embraced therein. He asserts not only that he has the property scheduled, but also that he has no other property. See

In re Tobias, 215 Fed. 815.

In re Bendheim, 180 Fed. 918.

It is contended on behalf of the bankrupt that he filed his schedules in this case under compulsion because of the motion made to compel him to file them. Inasmuch, however, as he made no claim of privilege in respect to the filing of schedules, the above mentioned rule stands, and he is subject to examination in regard to what is contained in them, and also as to whether he has any other property.

Judge Learned Hand remarked in his opinion in the case
85 of In re Tobias, *Supra*:

"* * * it is as if the bankrupt had sworn on the examination itself: 'I have no property except Whiteacre.' He could not

stop the inquiry with that answer, but would be open to further search designed to test the truth."

It may be argued that stolen property is not an asset of the bankrupt estate and that the questions in regard to securities which are thought to have been stolen from the surety companies should be disallowed on the ground that their only effect would be to incriminate the witness. The proceeds of this property which may have reached the bankrupt would be payable to his trustee even though they were subject in the hands of the trustee to equitable liens in favor of the owners of the original securities which would consume such proceeds. Moreover, the securities themselves might become in every sense assets of the estate if the owners by waiving the tort for conversion should prove as creditors in bankruptcy. I think, therefore, that the examination in regard to those securities should not be stopped upon any theory that neither they, nor their proceeds, could belong to the bankrupt estate. It is a fact, however, that an attempt to require the delivery to the trustee of the specific securities referred to in the petition on the ground that the bankrupt has not accounted for them cannot succeed, at least, at the present time because it does not appear that they belonged to the estate.

Moreover the application that the bankrupt turn over to the trustee the \$500 which he says his wife gave him, cannot succeed, for it is not apparent that this money was given him prior to the date of the filing of the petition. If the trustee wishes to examine him further about this money he may do so.

In respect to the questions asked the bankrupt, I will order him to answer all the questions in Schedule A, except 3 and 8;

All the questions in Schedule B;

All the questions in Schedule C, except 6 and 40;

All the questions in Schedule D, except 4, 5, 6, 7, 28, 29, 30, 76, 181, 182, 199, 200, 242 and 271;

All the questions in Schedule E, except 43, 44 and 56.

Settle order on notice.

A. N. H., D. J.

August 10th, 1920.

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EXHIBIT H.

At a Sated Term of the District Court of the United States for the Southern District of New York, Held at the United States Court and Post Office Building, in the Borough of Manhattan, in the City of New York, on September 1st, 1920.

Present: Hon. A. N. Hand, District Judge.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Order Directing Bankrupt to Answer Questions.

An order having been made herein on June 1st, 1920 requiring the Bankrupt to show cause why he should not be punished for con-

tempt of court for his refusal to answer certain specified questions and why he should not be required to turn over to the Trustee in Bankruptcy herein certain sums of money and certain specified securities and why he should not be punished for contempt of court for failure to file schedules herein.

Now, on reading and filing the said order to show cause and the affidavits of Saul S. Myers and of Joseph K. Guerin, each sworn to June 1st, 1920, in support thereof and the proof of the service thereof thereon endorsed; and.

88 On reading, in support of the said motion, the following papers on file herein in the office of the Clerk of the above named Court, to wit, the petition for the involuntary bankruptcy of the said Arnstein, in order adjudicating the said Arnstein a bankrupt, the orders for the examination, under Sect. 21-A of the Bankruptcy Act, of the said Arnstein and witnesses, the testimony of the said Arnstein given pursuant to such orders and the certificates of the Special Commissioners, all specified in the order to show cause, and also the schedules filed herein by the Bankrupt on the 10th day of June, 1920, of his assets and liabilities.

And after hearing Selden Bacon and Saul S. Myers, Esqs., of counsel for the Trustee in Bankruptcy herein in support of the said motion and William J. Fallon and James W. Osborne, Esqs., of counsel for the Bankrupt, in opposition.

And on due proof of due service of said motion papers it is, on motion of Saul S. Myers, attorney for said Trustee,

Ordered, 1. That the motion to punish the Bankrupt for contempt for failure to file his schedules is denied.

2. That the motion to punish the Bankrupt for contempt for failure to answer the several interrogatories put to him at the time they were put is denied.

3. That the motion to require the Bankrupt to make
89 answer to interrogatories, and to so instruct the Commissioner, is granted to the following extent, to wit: The said Bankrupt be and he hereby is ordered to answer all of the questions in Schedule A annexed to the motion papers herein except questions 3 and 8; and all of the questions in Schedule B annexed to the motion papers; and all of the questions in Schedule C annexed to the motion papers except questions 6 and 40; and all of the questions in Schedule D annexed to the motion papers except questions 4, 5, 6, 7, 28, 29, 30, 76, 181, 182, 199, 200, 242, and 271; and all of the questions in Schedule E annexed to the motion papers except questions 43, 44 and 56. And the Commissioner before whom the examination proceeds is instructed to require proper answers to such interrogatories from the Bankrupt.

The Commissioner is further instructed to require full and proper answers from the Bankrupt to all inquiries germane to any statements made by him contained in his said schedules of assets and liabilities.

It is further ordered, 4. That the said order to show cause be and the same hereby is amended by adding the words "proceeds of the" after the word "the" at the end of the second line of subdivision "(f)" and that so much of the said motion as prays that the said Bankrupt turn over to the Trustee herein such proceeds of certain securities be and the same is hereby denied for the present, but with leave to renew upon further showing.

AUGUSTUS N. HAND,
U. S. D. J.

90 STATE OF ———,
County of ———, ss:

———, being duly sworn deposes and says: That — is the — named in the foregoing —. That — has read the same and knows the contents thereof; that the same is true of — own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters — believes it to be true.

Sworn to before me this — day of —, 19—.

Notary Public, N. Y. Co.

[Endorsed:] District Court of the United States for the Southern District of New York. In the Matter of Nicholas Arnstein Bankrupt. Order directing bankrupt to answer questions, with notice of entry. Saul S. Myers, Attorney for Trustee, 60 Wall Street, New York. Sept. 9/20.

Sir:

Please take notice that the within is a copy order this day 4th made, entered and filed in the office of the Clerk of the District Court of the U. S. for the Southern Dist. of N. Y. Dated, New York, Sept. 7, 1920.

Yours, &c.,

SAUL S. MYERS,
Attorney for Trustee.

Office and Post Office Address, 60 Wall Street, New York City.

To: Fallon & McGee, Esqs., Attorneys for Bankrupt, No. 14 Broadway, New York City.

To: Nicholas Arnstein, Bankrupt.

Sir:

Please take notice that a —, of which the within is a copy, will be presented for settlement to Judge — at his chambers at the

County Court House of the County of —, on — —, 192—,
— o'clock.

Dated, New York, — —, —.

Yours, &c.,

SAUL S. MYERS,

Attorney for — —.

Office and Post Office Address: 60 Wall Street, New York City.

To: — —.

91 At a Stated Term of the District Court of the United States
for the Southern District of New York, Held at the P. O.
Building in New York City, September 14, 1920.

Present: Hon. M. T. Manton, Circuit Judge.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Order Adjudging Bankrupt in Contempt.

On reading and filing the testimony of the Bankrupt herein, taken September 14, 1920, before Commissioner Gilchrist, the order of Hon. M. T. Manton dated September 14th, 1920, denying a stay and the papers upon which the said order was based, the order of Hon. A. N. Hand dated and entered September 7, 1920, directing the bankrupt to answer, and the papers upon which the said order was made, and on reading all of the other orders, papers and proceedings herein, and after hearing Saul S. Myers, Esq., for the trustee and William J. Fallon, Esq., for the Bankrupt, and it appearing that the Bankrupt was duly sworn and the questions put as directed by Hon. A. N. Hand and that the Bankrupt refused to answer the same, it is on motion of Saul S. Myers, attorney for Hon. Henry A. Gildersleeve, Trustee, ordered, adjudged and determined

First. That the said Bankrupt is guilty of a contempt of this court in having wilfully and deliberately disobeyed said lawful orders of this Court dated September 7 and September 14, 1920, respectively and in having wilfully and deliberately refused to answer questions about his assets and liabilities and about his schedules.

Second. That the said Bankrupt, residing at No. 1 West 83rd Street, New York, be forthwith arrested by the Marshal for the Southern District of New York and brought before this Court this day, to be committed, as for the contempt aforesaid, and to be imprisoned by said Marshal until he shall have fully complied with said orders and all directions of the Special Commissioners and the Referee herein.

M. T. MANTON,

U. S. C. J.

93 [Endorsed:] 27525. District Court of the United States for the Southern District of New York. In the Matter of Jules W. Arndstein, Petitioner. Copy. Petition for a Writ of Habeas Corpus. Filed Sept. 18, 1920. U. S. Dist. Court, S. D. of N. Y. Fallon & McGee, Attorneys for Petitioner, 149 Broadway, Borough of Manhattan, New York City.

94 District Court of the United States for the Southern District of New York.

#275.

In the Matter of JULES W. ARNDSTEIN, Petitioner.

Memorandum.

The relator seeks his release by a writ of habeas Corpus contending that he is deprived of his liberty without due process of law. A petition in bankruptcy was filed against the relator on the petition of the National Surety Company. He was thereafter adjudicated a bankrupt on the 4th of March, 1920 and ordered to file schedules in triplicate as required by law, within ten days from the date thereof. In pursuance to this order, he filed his schedules mentioning his assets and liabilities. He was then subpoenaed to appear under §21A of the Bankruptcy Act for examination. He appeared. He took an oath voluntarily and when asked questions which concerned his assets, asserted his alleged Constitutional privilege, declining his assets and liabilities. He was then subpoenaed to appear. This question was thereafter referred to Judge A. N. Hand and on an opinion filed August 10, 1920, the bankrupt was directed to answer all questions relating to Schedule B and Schedule

95 C, except Nos. 6 and 40, and all questions in Schedule D except Nos. 4, 5, 6, 7, 28, 29, 30, 76, 181, 182, 199, 200, 242 and 271, and all questions in Schedule E, except Nos. 43, 44 and 45. An order was accordingly entered on September 1, 1920. Judge Hand held that since the bankrupt filed his schedules, he waived any privilege he might have to refuse to answer on the ground that his answers might tend to incriminate or degrade him. This order by Judge Hand was effective when, on the 14th of September, 1920, the bankrupt was again required to appear for examination. When examined, the bankrupt again refused to answer the questions directed to be answered in the order of September 1st, and for such refusal an order was granted on September 14, 1920, adjudging the bankrupt in contempt of court. He was placed under arrest by the Marshal and immediately made this application for a writ of Habeas Corpus.

The right to a Habeas Corpus is not a substitute for an appeal (*Storti v. Mass.*, 183 U. S. 137; *In re McKenzie*, 180 U. S. 526). Nor is the relator entitled to a writ of Habeas Corpus as a matter of right or form as urged by his counsel. On this application, the relator seeks to contest the validity or the sufficiency of the petition

in bankruptcy, thus attacking it collaterally. When the petition was filed, he did not contest the petition in time, but did a day late file an answer to the petition. This answer was late and therefore has not been received as such, but the relator did not endeavor to open his default. He did file his schedules and an oath was administered to him in the proceedings and he answered some preliminary questions and refused to answer questions concerning his assets and liabilities as he referred to them in his schedules.

By this procedure and conduct, he waived any objections which he might make as to the sufficiency of the petition. Further, the petition in bankruptcy cannot be attacked collaterally, even if it were demurrable or dismissible, on this application. (In re Edelstein, 149 Fed. 636; In re Clisdell, 101 Fed. 240.) The remedy which the relator should have invoked is the application to dismiss the petition in the bankruptcy proceedings. While the order of Judge A. N. Hand stands directing him to answer questions, a refusal to answer these questions is a contempt of court and therefore the order adjudging him in contempt was properly granted. If the relator felt aggrieved by Judge Hand's order, he should have proceeded by a petition to revise and seek to reverse it in the Circuit Court of Appeals. He does not do this, but urges here that he may test the question on a writ of Habeas Corpus, contending that his Constitutional rights are invaded if he be required to answer the questions. It is clear that this contention is a fallacy. I fully agree with Judge Hand's decision as to this and the cases which he cites fully support his conclusions of law.

A bankrupt who has taken part in a bankruptcy proceeding by attempting to file an answer and later to file his schedules, has waived any constitutional privileges which might be involved in answering the questions propounded. The matter is too plain in reason and in law for me to grant a writ of habeas corpus and thus permit the relator to attack the order of Judge Hand. Particularly is this so when he is afforded relief by a petition to revise if an error has been committed.

The application for a writ of Habeas Corpus is therefore denied, and the relator remanded to the custody of the Marshal with directions to place him in prison if he persists in his refusal to answer the questions propounded.

An order may be presented accordingly.

Dated: September 17th, 1920.

MANTON,
U. S. Circuit Judge.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Sep. 17, 1920, 12 M.

98 At a Stated Term of the District Court of the United States for the Southern District of New York, Held at the U. S. Court and P. O. Building in the Borough of Manhattan, in the City of New York, September 17th, 1920.

Present: Hon. Martin T. Manton, Circuit Judge, sitting as a District Judge.

In the Matter of NICHOLAS ARNSTEIN, Bankrupt.

Order for Denying Application for Writ of Habeas Corpus, etc.

The bankrupt herein having made application for a writ of habeas corpus, now on reading and filing the petition for such writ duly verified by the bankrupt and on reading the order made herein September 14th, 1920, denying the bankrupt's motion for a stay pending appeal from the order of Hon. A. N. Hand entered September 7th, 1920, and the order entered September 15th, 1920, adjudging the bankrupt in contempt of court and directing his imprisonment and all the papers upon which the said orders were made and on reading all of the papers and proceeding herein and after hearing William J. Fallon, Esq. and James W. Osborne, Esq., counsel for the bankrupt in support of the application for writ of Habeas Corpus and Saul S. Myers, Esq., counsel for Hon.

99 Henry A. Gilderleeve, Trustee in Bankruptcy herein, in opposition, it is on motion of Saul S. Myers, Attorney for the said Trustee, ordered,

That the said application be and the same hereby is in all respects denied.

And the bankrupt having been placed in the custody of his counsel, William J. Fallon, Esq., pending the hearing and determination of the application above referred to, it is ordered.

That the said bankrupt, Nicholas Arnstein, be and hereby is remanded to the custody of the U. S. Marshal for the Southern District of New York in accordance with the order of this Court herein of date September 14th, 1920, and the said Marshal be and he hereby is directed to forthwith arrest the said bankrupt and place him in Ludlow Street jail and keep him there in conformity with said order of September 14th, 1920, as long as he persists in his refusal to answer fully the several questions propounded, and to be propounded, which questions are fully referred to and described in the order of this Court herein made by Hon. A. N. Hand, entered September 7th, 1920, or any of them, and it is further ordered.

That the said William J. Fallon be and he hereby is directed to surrender said bankrupt to the U. S. Marshal for the Southern District of New York, for imprisonment pursuant to this order, on September 20th, 1920, at 10 a. m.

MANTON,
Circuit Judge.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Sep. 20, 1920, 10:25 a. m.

100 District Court of the United States, for the Southern District of New York.

In the Matter of JULES W. ARNDSTEIN, Petitioner.

Petition and Allowance of Appeal.

Now comes Jules W. Arndstein, the petitioner, and respectfully represents that on the 17th day of September, 1920, a judgment or order was entered by this court dismissing the petition for habeas corpus, and remanding him to the custody of the U. S. Marshal for the Southern District of New York, and your petitioner respectfully shows that in said record proceedings judgment and order in this case lately pending against your petitioner manifest errors have intervened to the prejudice and injury of your petitioner, all of which appears in the assignment of errors which is filed with this petition. Your petitioner feels that are grave doubts concerning the legality under the Constitution of the United States among other things of his restraint and detention under the order of commitment mentioned in his petition for the said writ, and desires in good faith to submit these questions to the Supreme Court for its determination.

Wherefore your petitioner prays that an appeal may be allowed him from said judgment and order to the Supreme Court of the United States, and that citation be issued as provided by law.

Dated September 28th, 1920.

FALLON & MCGEE,
Attorneys for Petitioner.

149 Broadway, Borough of Manhattan, New York City.

101 The foregoing appeal prayed for is hereby allowed and the amount of the bond is fixed at the sum of \$250.00.

Dated New York, September 20th, 1920.

MANTON,
U. S. Judge.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Sep. 20, 1920, 4 p. m.

102 United States District Court for the Southern District of New York.

In the Matter of JULES W. ARNDSTEIN, Petitioner.

Assignment of Errors.

Now comes Jules W. Arndstein, the above named petitioner, appellant, by Fallon & McGee, his attorneys, and in connection with his petition for the allowance of an appeal to the Supreme Court of the United States from the order of this court entered the 17th day of September, 1920, dismissing the petition for a writ of habeas corpus, discharging this writ of habeas corpus heretofore sued out by him, and remanding him to the custody of the Marshal for the Southern District of New York, makes and files the following assignments of error, to wit:

I. That the court erred in denying said writ of habeas corpus and remanding the petitioner to custody.

II. That the court erred in holding that the petitioner was not unlawfully restrained of his liberty.

III. That the court erred in not holding that the petitioner was held without due process of law and in violation of his rights under the Federal Constitution.

IV. That the court erred in holding that the order made by the United States District Court for the Southern District of New York on September 16th, 1920, committing petitioner to the custody of the U. S. Marshal for the Southern District of New York for refusing to answer the questions asked him in the bankruptcy proceedings of Jules W. Arndstein, an alleged bankrupt, before U. S. Commissioner Gilchrist, was valid.

V. That the court erred in holding that petitioner was guilty of contempt in refusing to answer the questions asked him in said bankruptcy proceedings before U. S. Commissioner Gilchrist, sitting as U. S. Commissioner in said Southern District of New York.

103 VI. That the court erred in holding that the writ of habeas — was not the proper remedy in this case to release petitioner from custody.

By reason whereof this petitioner-appellant prays that said judgment and order be reversed and that he be ordered discharged.
Dated September 20th, 1920.

FALLON & MCGEE,
Attorneys for Petitioner-Appellant.

149 Broadway, Borough of Manhattan, New York City.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Sep. 20, 1920, 4 P. M.

104 UNITED STATES OF AMERICA, ss:

To Saul S. Myers, Attorney for the trustee in bankruptcy; Alexander Gilchrist, Jr., Clerk of the District Court of the United States, Southern District of New York; Thomas D. McCarthy, Marshal for the Southern District of New York, by the Honorable one of the Judges of the District Court of the United States for the Southern District of New York, in the Second Circuit; to the United States of America:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Southern District of New York, wherein Jules W. Arndstein is the appellant and you are the appellee, to show cause, if any there be, why the judgment and final order rendered against the said appellant as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand and seal, at the Borough of Manhattan, in the City of New York, in the District and Circuit above mentioned, this 20th day of September, in the year of our Lord One Thousand nine hundred and twenty and of the Independence of the United States One hundred and forty-fifth.

[Seal of the District Court of the United States, Southern District of N. Y.]

MANTON,

U. S.

Judge of the [District] Court of the United States for the Southern District of New York, in the Second Circuit.*

105 [Endorsed:] 27525. District Court of the United States for the Southern District of New York. In the Matter of Jules W. Arndstein, petitioner. Citation. U. S. District Court, Filed Oct. 7, 1920, S. D. of N. Y. Fallon & McGee, Attorneys for Petitioner, 149 Broadway, Borough of Manhattan, New York City. Copy received. Saul S. Myers, Att'y for Trustee. Oct. 7, 1920.

[*Word enclosed in brackets erased in copy.]

106 UNITED STATES OF AMERICA,
Southern District of New York, ss:

In the Matter of JULES W. ARNDSTEIN, Petitioner.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this Seventh day of October, in the year of our Lord one thousand nine hundred and Twenty, and of the Independence of the said United States the one hundred and forty-fifth.

[Seal of the District Court of the United States, Southern
District of N. Y.]

ALEX. GILCHRIST, Jr.,
Clerk.

[Endorsed] United States Supreme Court. In the Matter of Jules W. Arndstein, Petitioner. Transcript of record. Appeal from the United States District Court for the Southern District of New York.

Endorsed on cover: File No. 27,932. S. New York, D. C. U. S. Term No. 575. Jules W. Arndstein, appellant, vs. Thomas D. McCarthy, United States Marshal for the Southern District of New York. Filed October 8th, 1920. File No. 27,932.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 575

JULES W. ARNDSTEIN, *Appellant*,

vs.

THOMAS D. MCCARTHY, United States Marshal for
the Southern District of New York.

MOTION TO ADVANCE.

*To the Honorable Justices of the
Supreme Court of the United States:*

Now comes the appellant herein, by his counsel, and respectfully moves that this Honorable Court order that this cause, which is here on direct appeal in habeas corpus from a final decision of the United States District Court for the Southern District of New York, refusing to issue the writ, be summarily advanced for hearing.

Appellant was committed to jail as punishment for an alleged civil contempt by virtue of an order of the United States District Court for the Southern District

of New York for refusing to answer certain questions propounded to him by the attorney for the trustee on cross examination in an involuntary bankruptcy proceeding in that court.

His refusal to answer the questions was based upon the ground that to do so might tend to incriminate him, and at the time of his refusal three indictments were pending against him in the State of New York.

He applied for a writ of habeas corpus before the United States District Court for the Southern District of New York on the ground that the order of the District Court, committing him to jail, was unconstitutional, in that it deprived him of his liberty without due process of law in violation of the Federal Constitution; that the order, being unconstitutional, was, therefore void; and being so, the Court was without jurisdiction to issue it. The judge of the District Court denied the writ, and allowed an appeal upon which the cause is now before this Honorable Court.

Appellant has been denied bail, and still remains incarcerated in the New York jail in the custody of the United States Marshal for the Southern District of New York.

Under these circumstances appellant respectfully moves that this cause be advanced for a summary hearing in this Court.

Respectfully submitted,

WILLIAM J. FALLON,

GEORGE L. BOYLE,

RUFUS S. DAY,

Counsel for Appellant.

BRIEF IN SUPPORT OF MOTION TO ADVANCE.

Section 761 of the United States Revised Statutes provides:

"The Court of Justice, or Judge shall proceed in a summary way to determine the facts of the case, by hearing the testimony and arguments and thereupon dispose of the party as law and justice require."

We deem it only necessary to quote from the language of Mr. Justice Brewer in delivering the opinion of this Court, construing this section in the case of *Storti v. Massachusetts*, 183 U. S. 138, 143:

"That mandate is applicable to this court whether it is exercising its original or appellate jurisdiction. Proceedings in *habeas corpus* are to be disposed of in a summary way. The interests of both the public and the petitioner require promptness; that if he is unlawfully restrained of his liberty it may be given to him as speedily as possible; that if not, all having anything to do with his restraint be advised thereof, and the mind of the public be put at rest, and also if further action is to be taken in the matter it may be taken without delay. Especially is this true when the *habeas corpus* proceedings are had in the courts of a jurisdiction different from that in pursuance of whose mandate he is detained. This matter of promptness is not peculiar to these cases in Federal Courts, but is the general rule which obtains wherever the common law is enforced. It is one of those things which give to such proceedings their special value, and is enforced by statutory provisions, both State and Federal. The command of the Section is 'to dispose of the party as law and justice require.' All the freedom of

equity procedure is thus prescribed; and substantial justice, promptly administered, is ever the rule of habeas corpus."

Rule 34 of this Court provides:

"1. Pending an appeal from the final decision of any court or judge declining to grant the writ of habeas corpus, the custody of the prisoner shall not be disturbed."

This being an appeal in habeas corpus from a final decision declining to grant the writ, the Rule precludes appellant from receiving bail at the hands of this Court pending final determination of the cause. In the face of the Rule, the only means available to appellant to receive the prompt administration of substantial justice, to which this Court has ruled he is entitled, is to have accorded him immediate hearing on the appeal itself.

Respectfully submitted,

WILLIAM J. FALLON,

GEORGE L. BOYLE,

RUFUS S. DAY,

Counsel for Appellant.